

# EXHIBIT 1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE DIDI GLOBAL INC. SECURITIES  
LITIGATION

Case No. 1:21-cv-05807-LAK

DECLARATION OF DAI XIN

I, DAI Xin, declare as follows:

1. I am Vice Dean and tenured Associate Professor at Peking University Law School. My primary research areas are legal theories, information and data privacy, comparative law, law and society, economic analysis of law, and AI governance.

2. I have been asked to provide an expert opinion in *In re DiDi Global Inc. Securities Litigation*, No. 21-CV-5807 (S.D.N.Y.) (hereinafter referred to as “**this Case**”), a United States federal securities class action against DiDi Global Inc. (“**DiDi**”) and its directors and officers and the underwriters. I understand that Plaintiffs have moved to compel DiDi to produce documents on DiDi’s privilege log.

3. I have been retained to provide this declaration addressing issues of Chinese law relevant to the pending motion. Specifically, I have been asked to offer an expert opinion on the following question: Within the framework of Chinese civil litigation, are communications between a company and its in-house counsel, as well as work product created by its in-house counsel for the purpose of rendering legal advice, protected from involuntary disclosure?

**PERSONAL BACKGROUND**

4. I obtained my LL.B. degrees in Law and Sociology from Peking University in 2006. Subsequently, I pursued legal studies in the United States at Duke University, where I was awarded a J.D. degree in 2009. In 2010, I was admitted to the New York State Bar and thereafter engaged in the practice of corporate and securities law with Shearman & Sterling LLP in their New York and Hong Kong offices from 2010 to 2013.

5. I then returned to academia, enrolling in the dissertation-based doctoral program at the University of Chicago, from which I received my J.S.D. degree in 2018. Concurrently with my doctoral studies, in 2013, I accepted a tenured faculty appointment at Ocean University of China Law School. At this institution I progressed from Associate Professor to Professor, and subsequently also served as Vice Dean, and concluded my service in 2020.

6. In 2020, I joined the faculty of Peking University Law School, widely recognized as China's preeminent institution for legal scholarship and education, as a tenured Associate Professor. I have served as Vice Dean at Peking University Law School since 2023.

7. My scholarly works include a monograph on information and data privacy law, along with over forty scholarly articles published in both Chinese and English-language academic journals. These publications address a diverse array of topics, including the theory and practice of privacy and confidentiality. Furthermore, I regularly provide consultancy services on various legal and policy matters to government agencies, courts, and business enterprises. Based on my educational and professional background, coupled with my research in the general fields of laws on information and data and comparative law (in particular on comparison between the Chinese and the U.S. legal systems), I am knowledgeable about the legal rules, principles, and practices pertinent to the question presented for my expert opinion.

8. Attached as Exhibit A is a true and correct copy of my curriculum vitae.

**MATERIALS REVIEWED**

9. In preparing this declaration, I have examined the following documents provided by DiDi's U.S. litigation counsel:

- (1) Plaintiffs' Motion to Compel DiDi to Produce Documents dated May 22, 2025;
- (2) Its related exhibits, including DiDi's privilege logs and the declaration of former judge Zhengyu Xin ("Plaintiffs' Expert Opinion");
- (3) Plaintiff's First Set of Requests for Admission dated April 11, 2025; and
- (4) DiDi's Amended Responses and Objections dated May 15, 2025.

10. In addition to reviewing the aforementioned materials, I have undertaken independent research encompassing pertinent Chinese laws and regulations, as well as relevant scholarly works. A comprehensive list of the authorities and materials upon which I have relied and to which I have referred in preparing this declaration is appended hereto as Exhibit B. This exhibit includes the original Chinese language versions of the relevant laws and regulations, along with their corresponding English translations.

**OPINIONS**

11. It is my opinion that, within the Chinese civil litigation framework, the confidentiality of communications between a company and its in-house counsel, as well as attorney work product generated by such counsel for the purpose of rendering legal advice, is indeed protected from involuntary disclosure in civil litigation pursuant to applicable laws and prevailing professional standards and practices in China. While Chinese law may not codify the attorney-client privilege or the work product doctrine in a manner identical to their counterparts under the U.S. law, in principle a litigant in a Chinese judicial proceeding cannot be compelled by an



opposing party, nor by the court itself, to disclose communications with its legal counsel or work product prepared for the purpose of litigation. Furthermore, it is pertinent to note that in China, a company's in-house counsel may practice Chinese law upon obtaining a Legal Qualification Certificate.

**I. Chinese law protects the confidentiality of attorney-client communications and work product prepared for purpose of litigation from involuntary disclosure in civil proceedings.**

**A. Chinese law mandates strict attorney confidentiality, affording confidentiality over attorney-client communications and attorney work product similar to that under the U.S.-style privilege doctrines.**

12. The foundation for confidentiality of attorney-client communications in China is explicitly established in national legislation. Article 38 of the *Law on Lawyers of the People's Republic of China* (hereinafter "**PRC Lawyers Law**"), as revised in 2017, unequivocally mandates the lawyers' duty of confidentiality. It provides that "[l]awyers shall maintain the confidentiality of information and circumstances pertaining to their clients or other individuals that such parties are unwilling to disclose, which lawyers become aware of during their professional activities. However, this obligation does not extend to facts and information concerning crimes that the client or other individuals are preparing to commit or are in the process of committing, which endanger national security, public safety, or gravely endanger the personal safety of others." (Exhibit B-1). This provision is unequivocally worded as an affirmative and binding obligation imposed upon lawyers to safeguard client confidence. It is not merely a discretionary guideline but a legal requirement that is central to the attorney's professional conduct. This statutory duty forms the bedrock of the confidential relationship between lawyers and their clients in China, which is very well understood as critical to ensure full and frank communications between attorneys and their clients.

13. This fundamental legal obligation of confidentiality is consistently reiterated and reinforced through professional self-regulatory norms. For instance, Article 9 of the *Norms of Lawyers' Professional Conduct (Provisional)* (律师执业行为规范（试行）), issued by the All China Lawyers Association (中华全国律师协会), echoes this requirement, underscoring the legal profession's commitment to upholding client confidentiality.<sup>1</sup>

14. Indeed, the Chinese legal framework concerning attorney confidentiality is multi-layered, comprising national legislation, departmental regulations, and extensive self-regulatory rules promulgated by lawyers' associations, requiring lawyers to keep confidential all kinds of communication with and information obtained from clients for purpose of rendering legal service. This comprehensive approach includes:

- a. National laws: In addition to the aforementioned Article 38 of the PRC Lawyers Law, Article 48 of the *Criminal Procedure Law of the People's Republic of China* (hereinafter "**PRC Criminal Procedure Law**"), as revised in 2018, also stipulates for attorney confidentiality. Indeed, under Article 48 of the *PRC Criminal Procedure Law*, defense lawyers have the right, not just duty, to keep confidential client information.<sup>2</sup>

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<sup>1</sup> 2007年10月8日《*Norms of Lawyers' Professional Conduct (Provisional)*》第9条规定：“A lawyer shall keep confidential the state secrets and trade secrets that he/she comes to know during his/her legal practice and may not divulge the privacy of the parties concerned.” (Ex. 54B-; ).<sup>1</sup>

A lawyer shall keep confidential the facts and information that he/she comes to know during his/her practice activities which his/her clients or other persons are unwilling to divulge, except for the facts and information regarding a crime that such clients or other persons are preparing or are currently committing, which endangers national security, public security and other crimes that seriously endanger the personal and property safety of others.” (Ex. 54B-; ).<sup>1</sup>

<sup>2</sup> 2018年11月8日《*PRC Criminal Procedure Law*》第48条规定：“Defense lawyers have the right to keep confidential relevant situations and information of the client known during their professional activities... If [the client] is preparing or is in the process of committing crimes that endanger national security, public safety, or seriously endanger the personal safety of others, they shall promptly inform the judicial authorities.” (Ex. 54B-A).<sup>1</sup>

b. Agency regulations: Various governmental bodies have issued rules that reinforce the lawyers' duty of confidentiality, such as regulations pertaining to the management and archiving of lawyers' case files (e.g., *Measures for the Archiving of Lawyers' Business Files* (律师业务档案立卷归档办法), *Administrative Measures for Lawyers' Business Archives* (律师业务档案管理办法)) and disciplinary measures for violations of professional conduct (e.g., *Measures for Punishing Illegal Acts of Lawyers and Law Firms* (律师和律师事务所违法行为处罚办法), *Administrative Measures for the Practice of Law by Lawyers*, *Administrative Measures for Law Firms* (律师事务所管理办法)).

c. Self-regulatory norms: The All China Lawyers Association and its local counterparts have established a robust set of ethical codes and conduct rules that consistently emphasize the lawyers' duty to maintain client confidentiality. These include, but are not limited to, provisions within the *Lawyers' Professional Ethics and Practicing Disciplinary Norms* (律师职业道德和执业纪律规范), the aforementioned *Norms of Lawyers' Professional Conduct (Provisional)* (律师执业行为规范 (试行)), the *Norms for Lawyers Handling Criminal Cases* (律师办理刑事案件规范), and the *Rules for Disciplinary Actions Against Members of Lawyers Associations for Violations* (律师协会会员违规行为处分规则).

15. It is noteworthy that, over the past decade, the legal framework governing attorney-client confidentiality in China has undergone a significant and progressive evolution, demonstrably solidifying the recognition and scope of these protections. Illustratively, the 2018 revision of the *PRC Criminal Procedure Law* introduced Article 48 which, as previously discussed,

explicitly codifies the protection of attorney-client communications within the demanding sphere of criminal justice (Exhibit B-3). Relatedly, the 2017 revision to the *Norms for Lawyers Handling Criminal Cases* also integrated enhanced provisions specifically safeguarding such confidentiality.

<sup>3</sup> The formal entrenchment of these protections within the criminal context—where the state’s investigatory and prosecutorial interests are at their zenith and any claim to privilege faces its most rigorous test—carries profound implications beyond criminal procedure itself. The legislative determination that attorney-client confidentiality can shield communications even from state prosecutorial demands buttresses its robust application against compelled disclosure in civil litigation between private parties, where the countervailing interests are typically less exigent. This developmental trajectory is further corroborated by the 2016 revisions to the *Administrative Measures for the Practice of Law by Lawyers*, which also refined and strengthened the confidentiality obligations incumbent upon legal practitioners.

16. Plaintiffs’ Expert Opinion seems to suggest that Chinese law does not protect attorney-client communications and work product because, allegedly, no provision empowers lawyers to “*invoke the duty of confidentiality to refuse a court’s order to produce evidence.*”<sup>4</sup> This assertion is inaccurate and flawed for several reasons. *First*, it erroneously implies that the confidentiality of attorney-client communications under Chinese law is routinely or easily subordinated to other interests. To the contrary, as previously described, Chinese law explicitly recognizes and upholds lawyers’ statutory “right to keep confidential” client information even

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<sup>3</sup> 11 81p30v550ns1add8d14014 81*Norms for Lawyers Handling Criminal Cases*15n1; □□15n67ud8d,1f031 8xamp8,2 346781; □□ (“Lawyers shall keep confidential any information or circumstances related to their clients or other individuals that they become aware of during their professional practice, provided that such information is not intended to be disclosed.”) □ 346781D (“Defense lawyers have the right to keep confidential any information regarding their clients that they obtain in the course of their professional practice, and may refuse to disclose such information to any entity or individual.”) (Ex. 554B-□F).1

<sup>4</sup> 17a5n4ffs’IExp834Op5n50n, 141199.1

within the demanding context of criminal prosecutions. *A fortiori*, in civil litigation between private parties, where such compelling state interests related to public order and national security are typically absent, the rationale for recognizing and upholding the confidentiality of lawyer-client communications and attorney work product is even more compelling.

17. *Second*, the pervasive nature of these legal and ethical mandates has cultivated a strong academic consensus and, more importantly, a general societal and professional expectation that communications between a client and their attorney, as well as the work product generated for the purpose of providing legal advice, are to be kept confidential. The comprehensive and stringent duties of confidentiality imposed upon lawyers serve a similar function in protecting the sanctity of the lawyer-client relationship and the advice sought and rendered within it, as in common law jurisdictions like the United States. This fosters a legitimate expectation among litigants that such matters will remain shielded from disclosure in civil proceedings. Indeed, as will be discussed in the following Section II, while Chinese courts possess the authority to order the production of evidence, I am unaware of, and the Plaintiffs' Expert has not identified, any instance where a Chinese court has compelled a litigant to disclose communications with its attorneys (whether external or in-house) or work product prepared by counsel. Crucially, none of the cases cited in the Plaintiffs' Expert Opinion involve an order for the disclosure of such attorney-client communications or work product materials.

18. *Third*, the validity of confidentiality protections under Chinese law is not contingent upon their being absolute; nor does a theoretical possibility of compelled disclosure distinguish the Chinese system from that of the United States. A U.S. court also could order a party to disclose certain documents or information, and compliance with such court's order is also mandatory. Privilege does not justify resisting court-ordered document production, although it is

a valid reason to refuse to produce in the absence of a specific court order to the contrary. As discussed below, unlike the unique U.S.-style discovery procedure, there is no overall obligation of document production in a Chinese civil proceeding for a party to search and produce its internal records, and each party has to predominantly rely on its own records as evidence to prove its case in civil litigation. Such civil procedure itself affords protection to the confidentiality of attorney-client communication and work product in addition to the explicit confidentiality requirements previously enumerated. The mere theoretical possibility that a court *could*, under exceptional and as-yet-unseen circumstances in this context, order disclosure does not negate the existence or efficacy of these established confidentiality protections.

**B. The fundamental evidentiary principle of “*he who asserts, must prove*” in Chinese civil litigation precludes compelled production of evidence from an opposing party, thereby reinforcing the expectation of confidentiality for attorney-client communications and attorney work product.**

19. A cornerstone of Chinese civil procedure – similar to other civil-law jurisdictions – is the principle of “*he who asserts, must prove*” (谁主张，谁举证). This fundamental principle concerning burden of proof dictates that each party bears the primary responsibility for adducing evidence to substantiate its own claims and legal positions. Article 67 of the *Civil Procedure Law of the People’s Republic of China* (hereinafter “**PRC Civil Procedure Law**”) codifies this principle, stating that : “[a] party has the responsibility to provide evidence for its own assertions.” (Exhibit B-4). This allocation of evidentiary responsibility shapes the entire process of evidence gathering and presentation in Chinese civil litigation.

20. Consequently, the Chinese civil litigation system does not feature a broad, party-driven discovery mechanism analogous to that found in common law jurisdictions such as the United States. In the U.S. system, pre-trial discovery often involves extensive and compulsory exchange of information between litigants, including requests for documents, interrogatories, and

depositions, compelling parties to disclose otherwise non-public, internal materials that may be relevant to the opposing party's case. Doctrines such as attorney-client privilege and the work product rule are therefore essential in common law systems to shield confidential legal advice and litigation strategy from the otherwise far-reaching scope of such discovery obligations.

21. In contrast, the Chinese civil procedural framework, premised on each party independently developing and presenting its own evidentiary support, inherently limits the ability of any litigant to compel the disclosure of evidence directly from its adversary. In fact, the Chinese evidentiary framework has faced persistent criticism and calls for reform from some legal scholars, as they contend that its lack of a mechanism for compelling evidence production creates difficulties for litigants attempting to effectively pursue their claims.<sup>5</sup> There has been adjustments to such stringent evidentiary principle. For example, as discussed in the subsequent Section II.B of this declaration, the Chinese courts may order evidence production under specific and limited circumstances. Nonetheless, till this day the general rule remains clear that a party is not obligated to voluntarily furnish, or be compelled by either the court or its opponent to furnish, information or documents, including, but way beyond, internal communications with its legal counsel or attorney work product prepared for the purpose of legal advice.

22. This structural characteristic of Chinese civil procedure has significant implications for the protection of attorney-client communications and attorney work product. Since there is no general procedural mechanism for an opposing party to demand access to such materials, the need for a specifically codified "attorney-client privilege" or "work product doctrine" for evidentiary

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<sup>5</sup>See B.g., Wang, *The Institutional Construction of Parties' Document Production Obligation*, 1 ALJ 354 (2018); (Ex 54B-A) Jans, *5Z Ongl&IXa0785Yuan, The Establishment of Evidence Discovery System in China's Anti-Monopoly Civil Litigation: Rationales and Pathways*, 11 L8ga7S65 Mag. 1; (Ex 54B-1).

purposes aside from the more general and all-encompassing confidentiality requirements for attorney-client communications to act as a shield against opponent-initiated discovery did not develop in China in the same manner or with the same imperative as in common law systems. The Chinese civil procedure's architecture itself provides a *de facto* protection against compelled disclosure to the opposing litigant, as the default is non-production of materials held by a party unless specifically ordered by the court under very narrow exceptions.

23. This procedural reality in turn substantially reinforces the general expectation of confidentiality discussed above. Litigants and their counsel in China operate with the understanding that their preparatory materials, legal analysis, and internal communications for the purpose of obtaining or providing legal advice are for their own use and will not ordinarily be subjected to forced disclosure to the opposing side. This understanding is crucial for enabling effective legal representation, as clients can communicate candidly with their attorneys and attorneys can prepare their cases thoroughly, without the pervasive concern that their internal deliberations and strategic thinking will be laid bare to their adversaries through discovery demands.

24. Therefore, while the doctrinal representations may differ, the Chinese civil litigation system, through its allocation of the burden of proof and the corresponding absence of broad inter-party discovery as well as the overall confidentiality requirement of attorney-client communications, provide a functional protection for attorney-client communications and attorney work product against compelled disclosure to an opposing party. This systemic feature ensures that the confidentiality vital for effective legal counsel is maintained, contributing to a legitimate and protected expectation among litigants that such materials will remain private within the attorney-client relationship during the course of civil proceedings.



**II. The Chinese courts’ limited authority to compel litigants to disclose attorney-client communications is restricted to exceptional circumstances and does not apply to the types of documents at issue in this Case.**

**A. Article 70 of the *PRC Civil Procedure Law* does not give the courts unlimited discretion to compel the production of attorney-client communication and attorney work product.**

25. In Chinese civil litigation, while parties bear the primary burden of adducing evidence to prove its own case, the courts are vested with certain powers to investigate and collect evidence. These powers are exercised through two primary procedural mechanisms: (A) the court’s initiative to investigate and collect evidence (“**Court-Initiated Evidence Collection**”), and (B) the court’s issuance of an order compelling a party to produce documentary evidence (“**Order for Document Production**”). As will be demonstrated in the below Section II.B, neither of these mechanisms were designed as a means to compel a litigant to disclose confidential communications with its legal counsel or attorney work product prepared for the purpose of obtaining legal advice.

26. It is important to first correct a misapprehension seemingly proffered by Plaintiffs’ Expert Opinion, which is the notion that Chinese courts’ statutory powers to investigate and collect evidence are tantamount to an absolute or unlimited authority. The Plaintiffs’ Expert Opinion specifically cites Article 70 of the *PRC Civil Procedure Law*, which reads: “*The People’s Court has the right to investigate and collect evidence from relevant entities and individuals, and such entities and individuals must not refuse.*” (Exhibit B-4). From this provision, the Plaintiffs’ Expert Opinion extrapolates an overarching judicial power to compel disclosure of any information from any entity or individual, including lawyers to a party, without any deference to the confidentiality of attorney-client communications or work product.<sup>6</sup> Such an interpretation takes the statutory

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<sup>6</sup> Plaintiffs’ Expert Opinion, at ¶ 11C-11.

language out of its context, and also is inconsistent with the provision's intended scope. An accurate reading of Article 70 must account for its interplay with other legal principles, and its application within the Chinese legal system.

27. The Plaintiffs' Expert Opinion's interpretation of Article 70 of the *PRC Civil Procedure Law* seems to have overlooked a basic distinction embedded within the law, which is the conceptual and practical differentiation between “*parties*” (当事人) to the litigation and “*relevant entities and individuals*” (有关单位和个人). The term “*relevant entities and individuals*,” as employed in Article 70 and throughout the *PRC Civil Procedure Law* (appearing, for instance, 19 times in multiple provisions), primarily refers to non-parties or third parties to the litigation. These provisions typically obligate such third parties to assist with court-ordered measures, such as collecting evidence (e.g., Article 70)<sup>7</sup>, facilitating mediation efforts (e.g., Article 98)<sup>8</sup> and cooperating with enforcement procedures (e.g., Article 117)<sup>9</sup>. Indeed, as the Supreme People's Court of China clarifies, the purpose of Article 70 is properly interpreted to provide courts with the essential authority to procure evidence from non-party sources through the Court-Initiated Evidence Collection mechanism, which is the courts' mandate under Paragraph 2 of Article 67.<sup>10</sup>

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<sup>7</sup> 2023年10月14日《中华人民共和国民事诉讼法》第70条：“人民法院有权调查和收集证据，当事人及其诉讼代理人负有如实陈述的义务。”(Ex 54B-□).1

<sup>8</sup> 2023年10月14日《中华人民共和国民事诉讼法》第98条：“人民法院在审理案件过程中，可以邀请有关单位和个人协助。被邀请的单位和个人，应当如实反映情况，并提供必要的证明材料和便利。”(Ex 54B-□).1

<sup>9</sup> 2023年10月14日《中华人民共和国民事诉讼法》第117条：“当事人对生效法律文书确定的履行义务主体，向人民法院申请执行，人民法院应当依法采取强制执行措施。当事人拒不履行生效法律文书确定的义务，人民法院可以根据申请执行人的申请，依法采取强制执行措施。当事人拒不履行生效法律文书确定的义务，人民法院可以根据申请执行人的申请，依法采取强制执行措施。当事人拒不履行生效法律文书确定的义务，人民法院可以根据申请执行人的申请，依法采取强制执行措施。”(Ex 54B-□).1

<sup>10</sup> 王彦彦，2023，《理解与应用：新民事诉讼法（2023年修正）》（Volume I）(Ex 54B-□).1

The inherent constraints of the Court-Initiated Evidence Collection will be further discussed in Section II.B.

28. The court's power under Article 70 to procure evidence from third-parties is an important procedural instrument in the Chinese legal system that, unlike common law jurisdictions with broad discovery mechanisms, places the primary evidentiary burden on litigants who may otherwise face insurmountable difficulties in acquiring essential information held by uncooperative third parties, be they governmental bodies or private enterprises. However, Legal counsel representing a party to the litigation, when acting in their professional capacity, are not disinterested "*relevant entities or individuals*"; rather, their duties and obligations are intrinsically linked to their client, the party. In the case of in-house counsel, who are employees of a corporate party, the proposition that they fall within the ambit of "*relevant entities and individuals*" for the purpose of compelling evidence against their own employer/client under Article 70 is even less tenable and runs contrary to the structural logic of party representation.

29. Furthermore, the practical application of these judicial powers belies the assertion that they are unlimited or routinely invoked to compel involuntary disclosure from parties. In reality, Chinese courts are found to exercise their authority to investigate and collect evidence very conservatively, which in fact have prompted discussion among legal scholars about the perceived inadequacy of current laws and practices.<sup>11</sup> This scholarly discourse itself underscores that the existing powers, including those under Article 70, are not perceived or applied as granting the judiciary *carte blanche* to acquire any evidence from any source. The interpretation and application by Chinese judicial authorities and the broader legal community affirm that these

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<sup>11</sup> Wang, *A Systematic Construction of the System for Parties to Apply for Evidence Collection*, 11 *China Legal Studies* 1 (2018); Wang, *Legal Evidence Collection in China*, 11 *China Legal Studies* 1 (2018).

provisions are balanced against other fundamental legal principles, including the statutory and ethical duties of confidentiality owed by lawyers to their clients, which, as previously detailed, are robustly protected. To interpret Article 70 as an instrument that indiscriminately overrides such protections is to ignore its specific textual context, its functional role within the procedural architecture, and the consistent jurisprudential practice in China.

**B. Chinese court’s evidence collection mechanisms only apply to a limited number of specific circumstances, which do not include attorney-client communication or attorney work product.**

30. As previously noted, the Chinese court’s limited evidence collection power is exercised through two primary procedural mechanisms, neither of which were designed as a means to compel a litigant to disclose confidential communications with its legal counsel or attorney work product prepared for the purpose of obtaining legal advice.

The Court-Initiated Evidence Collection

31. The authority for a Chinese court to investigate and collect evidence on its own initiative is principally grounded in Article 67, Paragraph 2, of the *PRC Civil Procedure Law*. This provision states: “*Where a party and its litigation agent cannot collect evidence on their own due to objective reasons, or where the People’s Court considers such evidence necessary for trying the case, the People’s Court shall investigate and collect it.*” (Exhibit B-4).

32. The scope and application of this court-initiated evidence collection are further detailed in the *Interpretation by the Supreme People’s Court on the Application of the Civil Procedure Law* (hereinafter “***SPC Civil Procedure Interpretation***”) (Exhibit B-5). Specifically:

- a. Article 94 of the *SPC Civil Procedure Interpretation* clarifies the circumstances under which a party may apply to the court to investigate and collect evidence, primarily when evidence is controlled by state organs and relates to archival materials, or involves state

secrets, trade secrets, or personal privacy, or when a party is objectively unable to collect it for other reasons.<sup>12</sup>

b. Article 96 of the *SPC Civil Procedure Interpretation* elaborates on evidence that the People's Court shall investigate and collect on its own initiative. This includes evidence that may harm national interests, or social public interests, or the legitimate rights and interests of others; evidence related to personal status relationships; evidence related to such public interest litigations as environment or consumers; procedural matters affecting the fairness of the trial.<sup>13</sup>

33. Crucially, the Court-Initiated Evidence Collection mechanism, as outlined above, is widely understood and applied in practice as a way to procure from a third party or a state entity

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<sup>12</sup> *2014 SPC Civil Procedure Interpretation* p30v51s4 a41 "[e]vidence unable to be collected by a party and the agent ad litem thereof for objective reasons as provided for in Paragraph 2 of Article 67 of the Civil Procedure Law includes:

(1) evidence that is kept by the relevant state organs and the party and the agent ad litem thereof have no right to review or take possession of;

(2) evidence involving state secrets, trade secrets or personal privacy; and

(3) other evidence that the party and the agent ad litem thereof are unable to collect themselves for objective reasons.

*The party and the agent ad litem thereof may apply in writing to the People's Court for investigation and collection of evidence that is unable to be collected by themselves for objective reasons before expiration of the period for adducing evidence.*" (Ex 54B-C).1

<sup>13</sup> *2014 SPC Civil Procedure Interpretation* p30v51s4 a41 "Evidence that the People's Court deems necessary for the trial of a case as provided for in Paragraph 2 of Article 67 of the Civil Procedure Law includes:

(1) evidence involving possible damages to national interests or public interests;

(2) evidence involving identity relationships;

(3) evidence involving proceedings as provided for in Article 58 of the Civil Procedure Law;

(4) evidence about possible malicious collusion of the parties to damage the legitimate rights and interests of others; and

(5) evidence involving procedural matters such as ex-officio addition to the parties, suspension of a lawsuit, termination of a lawsuit and refusal.

*Except for the provisions specified in the preceding paragraph, the investigation and collection of evidence by the People's Court shall be conducted pursuant to the application of a party.*" (Ex 54B-C).1

(which is also a non-party to the civil case) evidence that parties themselves are unable to access, or to clarify fundamental aspects of the case that the court deems essential for adjudication. This power is distinct from compelling a party to the litigation to produce evidence within that party's possession or control, particularly when such evidence may involve internal assessments or confidential advice.

34. In particular, there is a widely recognized distinction in Chinese judicial practice between the court's general power to investigate and collect evidence, on the one hand, and the procedural tool of an "Order for Document Production", which is specifically designed to compel a party to litigation to submit documentary evidence in its possession, on the other hand. Court precedents of the Chinese Supreme People's Court<sup>14</sup> and other judicial discussions of local courts<sup>15</sup> explicitly highlight that if a court seeks to obtain evidence held by a litigant, it may not employ the mechanism of Court-Initiated Evidence Collection as discussed above; instead, the court should use the mechanism of Order for Document Production, which, as will be discussed subsequently, has its own set of rules and strict limitations and may not simply be applied to compel disclosure of confidential attorney-client communications or work product.

35. Therefore, the Chinese courts' general power to investigate and collect evidence on its own initiative, as provided under Article 67 of the *PRC Civil Procedure Law* and detailed in the *SPC Civil Procedure Interpretation*, is not designed to compel a party to disclose its confidential communications with legal counsel or attorney work product. The expectation is that parties will present their own cases, supported by evidence they choose to submit, rather than being

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<sup>14</sup> (See, e.g., *Zu5Ga01a1M5n1S 8n1N0.1* [2014] 81 *5n8s81Sup38m8IP80p7's10u34* (Ex 554B-D) and *(; ; ) Zu5Ga01a1Z 5M5n1Z 0ng1N0.1* [2014] 81 *5n8s81Sup38m8IP80p7's10u34* (Ex 554B-).)

<sup>15</sup> See, e.g., *5s4In43m8d5a4IP80p7's10u34* [2014] *How Would a Judge Interpretate Applying for Court-Initiated Evidence Collection and Investigation Order* (O640b83; ; ) (Ex 554B-F).

subjected to broad court-led fishing expeditions into their confidential legal preparations through this particular mechanism.

#### Order for Document Production

36. The second mechanism through which a Chinese court may become involved in evidence disclosure by a party is the “Order for Document Production.” The foundational concept for such an order is referenced in Article 112 of the *SPC Civil Procedure Interpretation*. This article states that if documentary evidence crucial for ascertaining case facts is controlled by an opposing party, a party may apply to the court for an order compelling that opposing party to produce it.<sup>16</sup>

37. However, the mere existence of this procedural tool does not grant the court or a litigant broad access to an opponent’s internal documents. The specific and limited circumstances under which a court may issue an Order for Document Production are detailed in the *Provisions of the Supreme People’s Court on Evidence in Civil Litigation* (hereinafter “**Civil Evidence Provisions**”) (Exhibit B-9). It is pertinent to note that while the Plaintiffs’ Expert Opinion merely references Article 112 of the *SPC Civil Procedure Interpretation*, a complete understanding of how the mechanism of Order for Document Production works requires consideration of Article 47 of these binding *Civil Evidence Provisions*, which strictly delineates the scope of such orders and was nevertheless not mentioned in Plaintiffs’ Expert Opinion.

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<sup>16</sup> 2015年12月31日《最高人民法院关于民事诉讼证据的若干规定》第112条：“Where the documentary evidence is under the control of the other party, the party with the burden of proof may apply to the People’s Court in writing before the expiration of the period for adducing evidence to order the other party to submit such documentary evidence.”

Where the application reason is tenable, the People’s Court shall order the other party to submit the documentary evidence, with the expenses arising from submission of the documentary evidence to be borne by the applicant. Where the other party refuses to submit the documentary evidence for no proper reason, the People’s Court may affirm that the content of the documentary evidence claimed by the applicant is true.”<sup>1</sup> (Ex 541B-C).

38. Article 47 of the *Civil Evidence Provisions* stipulates that a party controlling documentary evidence shall be ordered to submit it only under the following enumerated circumstances:

- “(1) *Documentary evidence that has been cited by the party controlling the documentary evidence in the course of litigation;*
- (2) *Documentary evidence prepared for the benefit of the opposing party;*
- (3) *Documentary evidence that the opposing party is entitled by law to consult or obtain;*
- (4) *Accounting books and original bookkeeping vouchers; or*
- (5) *Other circumstances where the People’s Court deems that the documentary evidence should be submitted.”* (Exhibit B-9).

39. These categories represent narrowly defined and very exceptional situations. Confidential communications between a party and its legal counsel, or attorney work product developed for the purpose of litigation, obviously do not fall within categories (1) through (4). Such materials are not typically “*cited*” by the party holding them if they are confidential. They are not “*prepared for the benefit of the opposing party*.” There is no general legal entitlement for an opposing party to “*consult or obtain*” them under Chinese law. And they are distinct from standard accounting records.

40. While category (5) grants the court a degree of discretion (“*[o]ther circumstances where the People’s Court deems that documentary evidence shall be submitted*”), this discretion is not unfettered. It must be exercised in a manner consistent with the fundamental principles of Chinese civil procedure and the overarching legal framework, including the duties of attorney confidentiality discussed in Section I. As the Chinese Supreme People’s Court itself has elucidated in its official publication, *Understanding and Application of the New Provisions of the Supreme*



*People's Court on Evidence in Civil Litigation (Volume I)* (最高人民法院新民事诉讼证据规定理解与适用 (上册))<sup>17</sup>:

“Generally, a party has no obligation to submit evidence harmful to its interests or to assist the opposing party in evidence production. ... Order for Document Production is an extremely exceptional measure in civil litigation, so that it requires very strict limitation.”

This official guidance underscores that any discretionary application of category (5) must be approached with considerable caution and reserved for truly exceptional situations, rather than serving as a broad mandate for compelling disclosure. By some scholarly account, in practice the invocation of Order for Document Production is indeed very rare.<sup>18</sup>

41. The sharply circumscribed nature of the Order for Document Production mechanism is a direct corollary of the foundational principle of Chinese civil litigation discussed in Section I.B, namely, that each party bears the responsibility of proving its own case. This principle inherently limits any obligation for a party to actively provide its opponent with evidence, particularly evidence that could be detrimental to its own position or reveal its confidential legal strategies.

42. Consequently, even when considering the specific mechanism of an Order for Document Production, which allows a court to compel evidence from a party, it clearly is not designed to compel a party to disclose its confidential communications with attorneys or attorney work product. The stringent prerequisites outlined in Article 47 of the *Civil Evidence Provisions*,

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<sup>17</sup> 1. See 41 5. 51 5. 50 10 f14 81 Sup 38 m 81 P 80 p 7's 1 0 u 34 1 *Understanding and Application of the New Provisions of the Supreme People's Court on Evidence in Civil Litigation (Volume I)* (2020) (Ex 5b 54B-□).1

<sup>18</sup> 2 6603d 5ng 140 10n 8ls 4dy, lf30m1; □□C1401; □; □14 838 lwas la 140 4 710 f1CF9 l6as 8s lw 838 l4 81□ 5n 8s 8160u 34s 1 app 78d l4 810 3d 8310 f1□ 06um 8n 4 3y lP 30du 640n 140 160mp 874 8 lp 30du 640n 10 f18v 5d 8n 68. 1□ 03lba 6kg 30und, l4 8165v 57l 6as 870ad lna 40nw 5d 815n 1□ 5na l5n l4 8ly 8a 310 f1; □□Cl was la 30und 1□□lm 5750n land l as l5n 68 lg 30wn la 4la 160ns 5d 83ab 781 p0340n ly 8a 3lby ly 8a 3 lSee lJ 5anjun l□a0, lOn the Overlap and Selection of Compulsory Documentary Evidence Collection Procedures, lCLaw lR 8v. l(□; □; □) (Ex 5b 54B-□).1

combined with the guiding principle that such orders are “extremely exceptional,” ensure that such sensitive legal materials remain shielded from compelled disclosure to an opposing party or the court. This system, therefore, provides substantial protection for the confidentiality of such materials within the context of Chinese civil litigation.

**C. Judicial practice further demonstrates that the courts do not compel attorney-client communication or work product for purpose of litigation.**

43. Based on my research into Chinese civil litigation practice and my professional observations, I am not aware of any instance where a Chinese court in a civil proceeding has compelled a party to disclose confidential communications exchanged with its legal counsel, or attorney work product generated for the purpose of obtaining or rendering legal advice in connection with that or anticipated litigation.

44. I have reviewed the Plaintiffs’ Expert Opinion, wherein nine Chinese court cases are cited purportedly to demonstrate that Chinese courts do not uphold the confidentiality of attorney-client communications or attorney work product. However, a careful examination reveals that these cases do not support such a conclusion. Critically, in none of the cited instances did a Chinese court actually compel a party to disclose attorney-client communications or work product developed for litigation or legal advisory purposes.

- (1) (2018) Liao Min Zhong No. 256:  
The attorney’s statement was voluntarily submitted by the plaintiff as part of its own evidentiary support as to the occurrence of certain events. The case did not involve compelled production or disclosure of legal advice or work product.
- (2) (2017) Yue Min Zhong No. 699:  
The attorney’s testimony pertained to such attorney’s role as a witness to what occurred at the signing of a contract. He was not providing legal advice or representation to any party involved in the subsequent litigation concerning that contract. His statement voluntarily submitted by the plaintiff was factual testimony as a witness, not a disclosure of confidential legal counsel.
- (3) (2013) Hu Er Zhong Min Si (Shang) Chu Zi No. S11:

The record at issue was interview records made by the Chinese police when they interviewed the regular outside legal counsels of a non-party to show the existence of capital contribution by the plaintiff. The case did not involve compelled production or disclosure of legal advice or work product.

(4) (2021) Su Min Zai No. 68:

The attorney's testimony voluntarily submitted by the plaintiff was about whether the attorney made a copy of a loan receipt at his law firm. This did not involve disclosure of legal advice or work product.

(5) (2015) E Yun Meng Min Chu Zi No. 01153:

The attorney's testimony as a fact witness merely described factual occurrences from a prior civil mediation process in which both parties had participated and were therefore fully aware of the events. This did not involve disclosure of legal advice or work product.

(6) (2024) Lu 09 Min Zhong No. 250:

The attorney statement voluntarily submitted by the plaintiff simply confirmed the objective fact that, in a separate matter, multiple creditors had jointly appointed the defendant to represent them in litigation. This did not involve disclosure of legal advice or work product.

(7) (2019) Yun 07 Min Zhong No. 231:

The attorney's statement voluntarily submitted by the plaintiff merely indicated the fact that the attorney had previously represented the defendant in a property-related lawsuit, in other words the existence of an engagement relationship, not the legal advice or work product.

(8) (2021) Lu 14 Min Zhong No. 2954:

In this case, the plaintiff submitted a statement from an attorney who had previously represented the defendant in an unrelated matter. The statement concerned a factual assertion: the defendant had previously borrowed money from the plaintiff. Importantly, this statement was voluntarily submitted by the plaintiff, not compelled by the court. Moreover, it pertained to a factual claim, not legal advice or work product.

(9) (2019) Yue 03 Min Zhong 34090:

This labor dispute involved the plaintiff (employee) attempting to prove employment with the defendant. The plaintiff submitted a statement from an attorney who had previously done work for the defendant. The attorney's statement simply confirmed the factual point that the plaintiff had indeed worked for the defendant, as the plaintiff coordinated with that attorney during employment. This was a factual confirmation, not a disclosure of legal advice or work product.

45. In summary, contrary to what the Plaintiffs' Expert Opinion may seem to imply, none of the cited instances demonstrate that Chinese courts compel the disclosure of confidential attorney-client communications or attorney work product prepared for the purpose of obtaining or providing legal advice, or in anticipation of litigation. In each case referenced, any attorney whose statement was submitted solely as a fact witness regarding discrete, non-privileged factual matters; their testimony did not involve the revelation of attorney-client communications or protected work product. Crucially, in none of these proffered instances did a Chinese court employ the Order for Document Production mechanism. And the Court-Initiated Evidence Collection mechanism was invoked in only one cited case, (2015) E Yun Meng Min Chu Zi No. 01153; even in that singular instance the court's action was narrowly confined to retrieving pre-existing testimony already archived within the court's own records from a prior civil mediation—a factual scenario far removed from compelling the disclosure of contemporaneous attorney-client communications or work product. The conspicuous absence, or highly circumscribed application, of these evidence-gathering tools in the very cases cherry-picked by Plaintiffs' Experts powerfully demonstrates the actual, limited scope of compelled disclosure permissible under either mechanism. This stands in direct contradiction to the Plaintiffs' Expert Opinion's portrayal of these mechanisms as broad authorizations for overriding attorney-client confidentiality. In fact, both mechanisms contemplate only the compelled production of records pertaining to specific facts, under exceptional circumstances, and distinctly not the forced disclosure of confidential attorney-client communications or privileged attorney work product.

**III. In-house counsel holding Legal Qualification Certificates are duly qualified to practice law in China for their employing company.**

46. It is understood that the in-house counsel for DiDi relevant to this matter are employees of the company and are not external lawyers practicing in Chinese law firms. Consequently, they would not typically possess a “Lawyer’s Practice Certificate” (律师执业证书), which is a specific credential required for individuals practicing as lawyers within a law firm structure in China. This distinction, however, does not imply that DiDi’s in-house counsel are not, or cannot be, qualified to engage in the practice of law on behalf of their employing company.

47. The concept of being “licensed to practice law” does not have a single, uniform definition under Chinese law that exclusively equates to holding a Lawyer’s Practice Certificate. The *Implementing Measures for the National Uniform Legal Profession Qualification Examination* (国家统一法律职业资格考试实施办法) establish that the national uniform legal profession qualification examination is designed to select qualified legal professionals, rather than to select only lawyers who will practice in law firms.<sup>19</sup> Any individual intending to practice law and successfully passing this examination will obtain a “Legal Qualification Certificate” (法律职业资格证书). In practice, the scope of “legal professionals” who practices law by virtue of passing such exam and obtaining such certificate is very broad, including not only attorneys in law firms but also judges, prosecutors, and government lawyers, among others. In other words, the pool of individuals qualified to perform legal work and “practice law” in a broader sense definitely extends beyond lawyers at law firms.

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<sup>19</sup> 2018年10月14日《Implementing Measures for the National Uniform Legal Profession Qualification Examination》第30条规定：“The national uniform legal profession qualification examination is a national examination organized by the State on a unified basis to select qualified legal professionals. ....”(Exhibit 54B-1).

48. The regulatory framework distinguishes between the requirements for practicing as a lawyer in a law firm and performing legal functions as an in-house counsel. Article 5 of the *PRC Lawyers Law*<sup>20</sup> stipulates that to practice as a lawyer at a law firm, one must obtain a Legal Qualification Certificate, complete a traineeship in a law firm, and then apply for and obtain a Lawyer's Practice Certificate. The special regulations concerning lawyers who practice at law firms, including that they obtain an additional Lawyer's Practice Certificate on top of the Legal Qualification Certificate, are meant to regulate lawyers who hold themselves out as legal practitioners to the general public, whom may otherwise be misled by unqualified lawyers to retain their services and pay them fees. Naturally, performing the duties of an in-house legal counsel for a company, which include providing legal opinions on significant corporate matters, managing litigation, and handling arbitration – or in fact, performing the duties of a prosecutor or a judge – does not require this separate Lawyer's Practice Certificate specifically designed for lawyers practicing with law firms. That certainly does not imply that the in-house counsel (or judges and prosecutors) are not qualified or licensed to perform legal work in their respective jobs; they are just not in the position to offer or provide paid legal work to random members of the general public who are not their employers.

49. This understanding is supported by provisions such as those found in the *Opinions on Promoting the Establishment of Systems for Party and Government Organ Legal Counsel*,

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<sup>20</sup> *PRC Lawyers Law* Article 5: "An applicant applying for approval to practice as a lawyer shall satisfy the following criteria:

- (1) he/she shall uphold the Constitution of the People's Republic of China;
  - (2) he/she has passed the national unified judicial exam and acquired the legal profession qualification;
  - (3) he/she has served pupillage in a law firm for a year; and
- he/she has good conduct. ...." (Ex. 54B-1).

*Public Lawyers, and Corporate Lawyers* (关于推行法律顾问制度和公职律师公司律师制度的意见), issued by the General Office of the CPC Central Committee and the General Office of the State Council in 2016 (hereinafter “*Opinions on Legal Counsel Systems*”) (Exhibit B-12). Article 17 of these Opinions stipulates that an employee serving as in-house corporate counsel should generally hold either a Legal Qualification Certificate *or* a Lawyer’s Practice Certificate.<sup>21</sup> This clearly indicates that possessing a Legal Qualification Certificate alone is considered a sufficient credential for an individual to serve in the capacity of in-house corporate counsel and perform legal duties for their employer. The duties enumerated for corporate counsel in these Opinions, such as providing legal advice, reviewing contracts, participating in dispute resolution, and handling litigation or arbitration<sup>22</sup>, are unequivocally activities constituting the practice of law.

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<sup>21</sup> 2016年10月14日《关于推行法律顾问制度和公职律师公司律师制度的意见》：“Employees within wholly state-owned or state-controlled enterprises (hereinafter referred to as “state-owned enterprises”) in industries such as commerce, finance, and culture, who specialize in handling the enterprise's legal affairs, as well as externally hired lawyers, may serve as legal counsels.”

Individuals who are already serving as legal counsels in state-owned enterprises but do not possess a Legal Qualification Certificate or a Lawyer’s Practice Certificate may continue to perform their legal counsel duties. After the implementation of the national unified legal professional qualification system, employees of state-owned enterprises or other externally hired **individuals intending to serve as legal counsels must possess a Legal Qualification Certificate or a Lawyer’s Practice Certificate**, except for those who are currently serving as legal counsels in other state-owned enterprises. In cases where state-owned enterprises in remote areas face difficulties in hiring legal counsels with Legal Qualification Certificate or a Lawyer’s Practice Certificate, they may continue to follow the current practice for appointing legal counsels. ....” (Ex. B-12).1

<sup>22</sup> 2016年10月14日《关于推行法律顾问制度和公职律师公司律师制度的意见》：“Legal counsel of state-owned enterprises shall perform the following duties:

(1) Participate in the drafting of the enterprise’s articles of association and the operational rules of the board of directors;

(2) Conduct legal reviews of the enterprise’s major business decisions, regulations, and contracts;

(3) Provide legal opinions on significant matters such as enterprise restructuring, mergers and acquisitions, listing, property rights transfers, bankruptcy reorganization, settlements, and liquidation;

(4) Organize and conduct compliance management, risk management, intellectual property management, management of externally hired lawyers, legal awareness and education training, and legal consultations;

(5) Organize and handle litigation and arbitration cases;

(6) Perform other duties as stipulated by the enterprise.” (Ex. B-12).1

While these Opinions were formulated with a primary focus on state-owned enterprises, they provide significant guiding principles for understanding the recognized qualifications and role of in-house counsel within the broader Chinese corporate environment, including private enterprises.

50. The cases cited in the Plaintiffs' Expert Opinion purportedly concerning the unauthorized practice of law do not diminish the qualifications of duly certified in-house counsel. An examination of these instances reveals their inapplicability:

(a) Three of the six cited examples reportedly involve unlicensed consulting agencies that were penalized for providing legal services beyond their authorized business scope. These concern corporate entities exceeding their registration, not individuals acting as in-house counsel.

(b) The other three cases reportedly concern trainee lawyers affiliated with law firms who were penalized for independently appearing in court or handling legal matters without the requisite Lawyer's Practice Certificate and proper supervision. These cases address the specific regulatory requirements for individuals practicing within the structure of a law firm, particularly those in a trainee status, and are entirely irrelevant to the qualifications of a company-employed in-house counsel holding a Legal Qualification Certificate.

None of these examples address or negate the ability of an individual holding a Legal Qualification Certificate to serve as an in-house counsel and practice law for its employing company.

51. In the context of the present matter, it is my understanding that the documents designated as privileged by DiDi involved communications with its in-house counsel. Provided that these individuals hold Legal Qualification Certificates under Chinese law (or are admitted to



foreign bars and advising on matters within their competence), their role in providing legal advice, managing litigation, and developing legal strategy for DiDi falls squarely within the recognized scope of activities undertaken by qualified in-house legal counsel in China. Such activities constitute the practice of law for their employer, and communications related thereto warrant protection in line with the principles of confidentiality discussed previously.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on June 6th, 2025.



DAI Xih

# **Exhibit A**

## DAI, Xin

Dr. Xin Dai is Associate Professor (tenured) and Vice Dean at Peking University Law School and Deputy Director of the Peking University Center for Global Law. Professor Dai received his LL.B. degrees (in law and in sociology) from Peking University (: 006), a J.D. degree from Duke University (: 009), and a J.S.D. degree from the University of Chicago (: 018). He previously practiced corporate and securities law at Shearman & Sterling's New York and Hong Kong offices (: 010-: 01?), and taught at Ocea University of Chicago Law School (: 01?-: 0: 0) as Professor and Vice Dean. Professor Dai's areas of research and teaching interests include legal theories, formatio and data privacy, comparative law, law and society, economic analysis of law, and AI governance. Professor Dai regularly consults on law and policy matters for government agencies, courts, and business enterprises. His work on the social credit system of China won the best paper prize at the Privacy Law Scholars Conference in 2018.

### Educational Background

The University of Chicago (J.S.D., : 018)

Duke University (J.D., : 009)

Peking University (LL.B. and dual LL.B. in sociology, : 006)

### Work Experience

Peking University Law School

- Vice Dean, : 0: ?-
- Associate Professor (tenured), : 0: 0-

Ocea University of Chicago Law School

- Vice Dean, : 018-: 0: 0
- Professor, : 017-: 0: 0
- Associate Professor, : 01?-: 017

Shearman & Sterling (New York and Hong Kong)

- Associate, : 010-: 01?
- Summer Associate, : 008

Baker & McKenzie (Shanghai)

- Summer Intern, : 007

### Recent publications in English language

- “Who Wants a Robo-Lawyer Now? AI Chatbots in China’s Public Legal Services Sector”, Yale Journal of Law & Technology, Volume : 6, Issue ?, : 0: 4
- “Regulating Platform Economy in China—Shocks and Reversals”, Georgetown Journal of International Affairs, Volume : 4, Number : , Fall : 0: ?
- “Privacy, Reputation, and Control—Public Figure Privacy law in Contemporary China”, Peking University Law Journal, Vol. 9, Issue : , : 0: 1
- The limited usefulness of the proportionality principle, International Journal of Constitutional Law, Vol. 19, Issue ?, : 0: 1 (with Yu-cheng Chang)
- “Toward A Reputation State—A Comprehensive View of China’s Social Credit System”, in Oliver Everling eds., Social Credit Rating, Springer Nature, : 0: 0.
- “Enforcing Law and Norms for Good Causes—One View of China’s Social Credit System Project”, Development, Vol.6?, : 0: 0
- “Unclosing China’s Corrupt Risks—A Securities Regulation Perspective,” Duke Journal of Comparative & International Law, Vol.: 4, : 014

## Recent Publications in Chinese language

### Book

- Information Privacy—Problems and Perspectives, Peking University Press, : 0: 4

### Articles

- “Research on the Rule of Law in Credit—Bottle-necks and Prospects”, Local Legislation Journal : (: 0: 5).
- “No-Fault Liability and AI Development—A Law-and-Economics Perspective”, Journal of East China University of Political Science and Law 5 (: 0: 4).
- “Safe Harbor Rules as Legal Technology—Ratios and Prospects”, The Jurist : (: 0: ?).
- “Platform Liability and Social Trust”, Legal Science 1 (: 0: ?).
- “‘No Turning Back’—Revisiting the Methodological Flaws of Proportionality”, Local Legislation Journal 6 (: 0: 1).
- “A Relational Approach to Data Element”, Peking University Law Journal 6 (: 0: 1).
- “The Value of Public Governance Technology in Integrated Construction”, Social Sciences in China Press, May : 0: 1.
- “‘See-Without-Telling’—A Foundational Privacy Norm”, Academic Monthly 4 (: 0: 1).
- “How to Repair Reputation”, China Law Review 1 (: 0: 1).

- “Information Governance of the ‘Postdemocratic State’—Practices and Philosophies”, *Cultural Review* 5 (: 0: 0).
- “A Holistic Perspective of Social Credit System Construction—Centralized Rule of Law, Centralized Rule of Virtue, and Regulatory Reinforcement”, *Peking University Law Journal* 6 (: 019).
- “Beyond the Law of the Horse (I)—Theoretical Advances in Internet Law Research”, *Local Legislation Journal* 4 (: 019).
- “Rediscovering Social Norms—A Social-Economic Perspective of Chinese Cyberlaw”, *Academic Monthly* : (: 019).
- “The Expansion of Mechanisms and Shifting Paradigms of Data Privacy—A Law-and-Economics Approach”, *SJTU Law Review* 1 (: 019).
- “Proportionality or Cost-Benefit Analysis—A Critical Reconstruction of Legal Methodology”, *Peking University Law Journal* 6 (: 018).
- “Bases and Corrections of ‘Dogmatic Heuristics’ Exemplified by Legal Studies of Suicide”, *Studies in Law and Business* 5 (: 018).
- “‘Law-Abiding as an Excuse’—Legal Intervention Through Social Norms”, *Law and Social Development* 6 (: 017).
- “Truth, Consequences, and ‘Beyond Reasonable Doubt’—The Fudan Poisoning Case”, *Legal Science* ? (: 017).
- “Co-authorship, Collaborative Research, and the Quality of Legal Scholarship”, *China Law Review* : (: 017).
- “Privacy Protection for Public Figures—A Restatement of Framework Theory”, *Modern Law Science* : (: 017).
- “How Norms Take Root—The Future of Law Enforcement and the Reality of Internet Platform Governance”, *China Law Review* 4 (: 016).
- “Regulating Voluntary Privacy Disclosure”, *Law and Social Sciences* 15(1) (: 016).
- “Property Discourse, News Production, and Innovative Competition”, *Science Technology and Law* : (: 015).

# **Exhibit B-1**

# 中华人民共和国律师法（2017 修正）

发 文 机 关 ： 全国人民代表大会常务委 员会常务委员会	Promulgated by:	Standing Committee of the National People's Congress
发 布 日 期 ： 2017. 09. 01	Promulgation Date:	2017.09.01
生 效 日 期 ： 2018. 01. 01	Effective Date:	2018.01.01
时 效 性 ： 现行有效	Validity Status:	valid

## 中华人民共和国律师法（2017 修正）

（1996 年 5 月 15 日第八届全国人民代表大会常务委  
员会第十九次  
次会议通过 根据 2001 年 12 月 29 日第九届全国人民代表大会常务委  
员会第二十五次会议《关于修改〈中华人民共和国律师法〉的决  
定》第一次修正 2007 年 10 月 28 日第十届全国人民代表大会常务委  
员会第三十次会议修订 根据 2012 年 10 月 26 日第十一届全国人民代  
表大会常务委员会第二十九次会议《关于修改〈中华人民共和国律师  
法〉的决定》第二次修正 根据 2017 年 9 月 1 日第十二届全国人民  
代表大会常务委员会第二十九次会  
议《关于修改〈中华人民共和国法

## Law of the People's Republic of China on Lawyers (Revision 2017)



官法〉等八部法律的决定》第三次修正）

## 第一章 总 则

## Chapter I General Provisions

**第一条** 为了完善律师制度，规范律师执业行为，保障律师依法执业，发挥律师在社会主义法制建设中的作用，制定本法。

**Article 1** This Law is formulated for the purposes of improving the lawyers' system, standardizing the practice of lawyers, safeguarding the legitimate practice of lawyers and optimizing the role of lawyers in the development of a socialist legal system.

**第二条** 本法所称律师，是指依法取得律师执业证书，接受委托或者指定，为当事人提供法律服务的执业人员。

**Article 2** A lawyer referred to in this Law shall mean a practicing person who holds a lawyer practising certificate and is entrusted or appointed by a client to provide legal services. Lawyers shall safeguard the legitimate rights and interests of their clients and safeguard proper implementation of the laws and the fairness and justice of the society.

律师应当维护当事人合法权益，维护法律正确实施，维护社会公平和正义。

**第三条** 律师执业必须遵守宪法和法律，恪守律师职业道德和执业纪律。

**Article 3** The practice of a lawyer shall comply with the Constitution and the laws and shall abide by the code of ethics and practice discipline of lawyers. The practice of a lawyer shall be based on facts and guided by the laws.

律师执业必须以事实为根据，以法律为准绳。

The practice of a lawyer shall be subject to supervision of the State, the society and the client.

律师执业应当接受国家、社会和当事人的监督。

The practice of a lawyer shall be protected by the laws and no organization or individual shall infringe on the legitimate rights and interests of a lawyer.

律师依法执业受法律保护，任何组织和个人不得侵害律师的合法权益。

**第四条** 司法行政部门依照本法对律师、律师事务所和律师协会进行监督、指导。

**Article 4** The judicial administrative department shall carry out supervision and guidance over lawyers, law firms and bar associations pursuant to this Law.

## 第二章 律师执业许可

## Chapter II Licensing of Lawyer's Practice

**第五条** 申请律师执业，应当具备下列条件：

**Article 5** An applicant applying for approval to practice as a lawyer shall satisfy the following criteria: (1) he/she shall uphold the Constitution of the People's Republic of China;

（一）拥护中华人民共和国宪法；

(2) he/she has passed the national unified judicial exam and acquired the legal profession qualification;

(3) he/she has served pupillage in a law firm for a year; and

（二）通过国家统一法律职业资格考试取得法律职业资格；

(4) he/she has good conduct.

（三）在律师事务所实习满一年；

Where a person has passed the judicial exam and acquired corresponding certificate or the lawyer's qualification prior to the implementation of the national unified legal profession qualification examination system, such certificate shall be deemed to have the same validity as the national unified legal profession qualification certificate.

（四）品行良好。

实行国家统一法律职业资格考试前取得的国家统一司法考试合格证书、律师资格凭证，与国家统一法律职业资格证书具有同等效力。

**第六条** 申请律师执业，应当

向设区的市级或者直辖市的区人民政府司法行政部门提出申请，并提交下列材料：

（一）国家统一法律职业资格证书；

（二）律师协会出具的申请人实习考核合格的材料；

（三）申请人的身份证明；

（四）律师事务所出具的同意接收申请人的证明。

申请兼职律师执业的，还应当提交所在单位同意申请人兼职从事律师职业的证明。

受理申请的部门应当自受理之日起二十日内予以审查，并将审查意见和全部申请材料报送省、自治区、直辖市人民政府司法行政部门。省、自治区、直辖市人民政府司法行政部门应当自收到报送材料之日起十日内予以审核，作出是否

**Article 6** An application for approval to practice as a lawyer shall be submitted to the judicial administrative department of the People's Government of a city divided into districts or the judicial administrative department of the People's Government of a district of a centrally-administered municipality along with the following documents: (1) the national unified legal profession qualification certificate;

(2) a document issued by a bar association to certify that the applicant has passed pupillage examination;

(3) the identity document of the applicant; and

(4) a certificate issued by a law firm on acceptance of the applicant.

An applicant applying for approval to practice as a lawyer on a part-time basis shall submit a certificate issued by his/her employer on consent to his/her lawyer practice on a part-time basis.

The department which accepts an application shall examine the application within 20 days from the date of acceptance of the application and submit the examination opinion and all application materials to the judicial administrative department of the People's Government of the province or autonomous region or centrally-administered municipality. The judicial administrative department of the People's Government of the province or autonomous region or centrally-administered municipality shall examine the application and decide on approval or non-approval within 10 days from receipt of the application materials. A lawyer practicing certificate shall be issued to the applicant if the application is approved. If the application is not approved, the applicant shall be notified in writing of the reason for non-approval.

准予执业的决定。准予执业的，向  
申请人颁发律师执业证书；不准予  
执业的，向申请人书面说明理由。

**第七条** 申请人有下列情形之一的，不予颁发律师执业证书：

（一）无民事行为能力或者限制民事行为能力的；

（二）受过刑事处罚的，但过失犯罪的除外；

（三）被开除公职或者被吊销律师、公证员执业证书的。

**第八条** 具有高等院校本科以上学历，在法律服务人员紧缺领域从事专业工作满十五年，具有高级职称或者同等专业水平并具有相应的专业法律知识的人员，申请专职律师执业的，经国务院司法行政部门考核合格，准予执业。具体办法由国务院规定。

**第九条** 有下列情形之一的，由省、自治区、直辖市人民政府司法行政部门撤销准予执业的决定，

**Article 7 Under any of the following circumstances, a lawyer practicing certificate shall not be issued to the applicant: (1) where the applicant has no capacity or limited capacity for civil conduct;**

**(2) where the applicant was subject to criminal punishment, except for an offence of negligence; or**

**(3) where the applicant has been expelled from office or has had his/her lawyer or notary practicing certificate revoked.**

**Article 8 Where a person who holds a basic or higher degree of a higher institution, has worked in a sector where there is a shortage of legal services personnel for 15 years, holds a senior position or equivalent professional level and possesses the corresponding professional legal knowledge applies for approval to practice as a full-time lawyer, he/she shall be allowed to practice upon passing an examination of the judicial administrative department of the State Council. The specific measures shall be formulated by the State Council.**

**Article 9 Under any of the following circumstances, the judicial administrative department of the People's Government of a province, an autonomous region or a centrally-administered municipality shall revoke the decision**

并注销被准予执业人员的律师执业证书：

（一）申请人以欺诈、贿赂等

不正当手段取得律师执业证书的；

（二）对不符合本法规定条件

的申请人准予执业的。

**on approval of practice and the lawyer practicing certificate of the person who has obtained approval for practice shall be cancelled:** (1) where the applicant has obtained the lawyer practicing certificate by improper means such as fraud or bribery etc.; or

(2) where the approval for practice has been granted to an applicant who does not satisfy the criteria stipulated in this Law.

**第十条** 律师只能在一个律师事务所执业。律师变更执业机构的，应当申请换发律师执业证书。

律师执业不受地域限制。

**Article 10 A lawyer shall practice in one law firm at any time. Where there is a change of law firm where a lawyer practices, he/she shall apply for a new lawyer practicing certificate.** The practice of a lawyer shall not be subject to geographical restriction.

**第十一条** 公务员不得兼任执业律师。

律师担任各级人民代表大会常务委员会组成人员的，任职期间不得从事诉讼代理或者辩护业务。

**Article 11 Civil servants shall not practice law on a part-time basis.** Where a lawyer is a member of the standing committee of any level of People's Congress, he/she shall not undertake work as a litigation agent or defense counsel during his tenure as a standing committee member.

**第十二条** 高等院校、科研机构中从事法学教育、研究工作的人员，符合本法第五条规定条件的，经所在单位同意，依照本法第六条规定的程序，可以申请兼职律师执业。

**Article 12 Teaching and research personnel of legal studies in higher institutions and scientific research organizations who satisfy the criteria stipulated in Article 5 may, upon obtaining consent of their employer, apply for approval to practice law on a part-time basis pursuant to the procedures stipulated in Article 6.**

**第十三条** 没有取得律师执业证书的人员，不得以律师名义从事法律服务业务；除法律另有规定外，不得从事诉讼代理或者辩护业务。

**Article 13** Persons who do not hold a lawyer practicing certificate shall not engage in legal services business in the name of a lawyer; and unless otherwise stipulated by the laws, shall not engage in litigation agent or defense counsel business.

### 第三章 律师事务所

### Chapter III Law Firms

**第十四条** 律师事务所是律师的执业机构。设立律师事务所应当具备下列条件：

**Article 14** A law firm shall be an organization where lawyers practice law. Establishment of a law firm shall satisfy the following criteria: (1) the law firm shall have its own name, address and articles of association;

（一）有自己的名称、住所和章程；

(2) the law firm shall employ lawyers who comply with the provisions of this Law;

（二）有符合本法规定的律师；

(3) the founder of the law firm shall be a lawyer who has the requisite practice experience and has not been suspended from practice during the past three years;

（三）设立人应当是具有一定执业经历，且三年内未受过停止执业处罚的律师；

(4) the law firm shall have assets which comply with the amount stipulated by the judicial administrative department of the State Council.

（四）有符合国务院司法行政部门规定数额的资产。

**第十五条** 设立合伙律师事务所，除应当符合本法第十四条规定的条件外，还应当有三名以上合

**Article 15** For the establishment of a partnership law firm, the partnership law firm shall, in addition to satisfying the criteria stipulated in Article 14, have three or more partners and the founder shall be a lawyer who has three or more years of practice experience. A partnership law firm may be established in

人，设立人应当是具有三年以上执业经历的律师。

合伙律师事务所可以采用普通合伙或者特殊的普通合伙形式设立。合伙律师事务所的合伙人按照合伙形式对该律师事务所的债务依法承担责任。

the form of a general partnership or a unique general partnership. The partners of a partnership law firm shall bear liability to the debts of the law firm pursuant to the law and according to the form of the partnership.

**第十六条** 设立个人律师事务所，除应当符合本法第十四条规定的条件外，设立人还应当是具有五年以上执业经历的律师。设立人对律师事务所的债务承担无限责任。

**Article 16** For the establishment of a sole proprietorship law firm, in addition to satisfying the criteria stipulated in Article 14, the founder shall be a lawyer who has five or more years of practice experience. The founder of the law firm shall bear unlimited liability for the debts of the law firm.

**第十七条** 申请设立律师事务所，应当提交下列材料：

- （一）申请书；
- （二）律师事务所的名称、章程；
- （三）律师的名单、简历、身份证明、律师执业证书；
- （四）住所证明；

**Article 17** The following materials shall be submitted for an application for establishment of a law firm: (1) an application form;

(2) the name and articles of association of the law firm;

(3) a list of the lawyers and their respective curriculum vitae, identity document and lawyer practicing certificate;

(4) the proof of address; and

(5) the proof of assets.

The partnership agreement shall also be submitted for the establishment of a partnership law firm.



（五）资产证明。

设立合伙律师事务所，还应当提交合伙协议。

**第十八条** 设立律师事务所，应当向设区的市级或者直辖市的区人民政府司法行政部门提出申请，受理申请的部门应当自受理之日起二十日内予以审查，并将审查意见和全部申请材料报送省、自治区、直辖市人民政府司法行政部门。省、自治区、直辖市人民政府司法行政部门应当自收到报送材料之日起十日内予以审核，作出是否准予设立的决定。准予设立的，向申请人颁发律师事务所执业证书；不予设立的，向申请人书面说明理由。

**第十九条** 成立三年以上并具有二十名以上执业律师的合伙律师事务所，可以设立分所。设立分所，须经拟设立分所所在地的省、自治区、直辖市人民政府司法行政部门审核。申请设立分所的，依照

**Article 18** An application for establishment of a law firm shall be submitted to the judicial administrative department of the People's Government of a municipality which is divided into districts or the People's Government of a centrally-administered municipality. The department which accepts an application shall examine the applications within 20 days from the date of acceptance of the application and submit the examination opinion and all application materials to the judicial administrative department of the People's Government of a province, an autonomous region or a centrally-administered municipality. The judicial administrative department of the People's Government of the province, autonomous region or centrally-administered municipality shall examine the application and decide on approval or non-approval of the application within 10 days from receipt of the application materials. A law firm practicing certificate shall be issued to the applicant if the application is approved. If the application is not approved, the applicant shall be notified in writing of the reason for non-approval.

**Article 19** A partnership law firm which has been established for three years or more and employs 20 or more practicing lawyers may establish a branch. An application for establishment of a branch shall be examined and approved by the judicial administrative department of the People's Government of the province, autonomous region or centrally-administered municipality at the location of the proposed branch. An application for establishment of a branch shall be processed pursuant to the procedures stipulated in Article



本法第十八条规定的程序办理。

合伙律师事务所对其分所的债务承担责任。

**18. A partnership law firm shall bear liability to the debts of its branch.**

**第二十条** 国家出资设立的律师事务所，依法自主开展律师业务，以该律师事务所的全部资产对其债务承担责任。

**Article 20 A law firm established with funding from the State shall undertake lawyers' businesses independently pursuant to the law and shall bear liability to its debts with all its assets.**

**第二十一条** 律师事务所变更名称、负责人、章程、合伙协议的，应当报原审核部门批准。

律师事务所变更住所、合伙人的，应当自变更之日起十五日内报原审核部门备案。

**Article 21 A change of name or person-in-charge of a law firm or an amendment to the articles of association or the partnership agreement shall be submitted to the original examination and approval authorities for approval. A change of address or partner of a law firm shall be filed with the original examination and approval authorities for records within 15 days from the date of change.**

**第二十二条** 律师事务所有下列情形之一的，应当终止：

（一）不能保持法定设立条件，经限期整改仍不符合条件的；

（二）律师事务所执业证书被依法吊销的；

（三）自行决定解散的；

**Article 22 Under any of the following circumstances, a law firm shall be terminated:** (1) where the law firm no longer satisfies the statutory criteria for establishment of the law firm and is still unable to satisfy such criteria following rectification within a stipulated period;  
(2) where the law firm practicing certificate has been revoked pursuant to the law;  
(3) where the law firm has decided on dissolution; or  
(4) any other circumstances under which the law firm shall be terminated pursuant to the provisions of the laws and administrative regulations.

（四）法律、行政法规规定应当终止的其他情形。

Where a law firm has been terminated, the department which issued the practicing certificate shall revoke the law firm practicing certificate.

律师事务所终止的，由颁发执业证书的部门注销该律师事务所的执业证书。

**第二十三条** 律师事务所应当建立健全执业管理、利益冲突审查、收费与财务管理、投诉查处、年度考核、档案管理等制度，对律师在执业活动中遵守职业道德、执业纪律的情况进行监督。

**Article 23** Law firms shall establish proper practice management, conflict checks, fees and financial management, complaints investigation and handling, annual examination and file management systems and supervise the compliance by lawyers with code of ethics and practice discipline in the course of their practice.

**第二十四条** 律师事务所应当于每年的年度考核后，向设区的市级或者直辖市的区人民政府司法行政部门提交本所的年度执业情况报告和律师执业考核结果。

**Article 24** Following the annual examination, a law firm shall submit an annual report on its annual practice and the lawyers' practice examination to the judicial administrative department of the Municipal People's Government of a municipality which is divided into districts or the District People's Government of a centrally-administered municipality.

**第二十五条** 律师承办业务，由律师事务所统一接受委托，与委托人签订书面委托合同，按照国家规定统一收取费用并如实入账。

**Article 25** A law firm shall accept entrustment on a unified basis for its lawyers and enter into entrustment contracts with the clients in writing, charge fees on a unified basis pursuant to the provisions of the State and keep accounts truthfully. Law firms and lawyers shall pay taxes pursuant to the law.

律师事务所和律师应当依法纳税。

**第二十六条** 律师事务所和律师不得以诋毁其他律师事务所、律师或者支付介绍费等不正当手段承揽业务。

**Article 26** Law firms and lawyers shall not defame other law firms or lawyers or solicit business by improper means such as payment of introduction fee etc.

**第二十七条** 律师事务所不得从事法律服务以外的经营活动。

**Article 27** Law firms shall not engage in business activities other than legal services.

#### 第四章 律师的业务和权利、义务

#### Chapter IV Lawyer's Business and Rights and Obligations

**第二十八条** 律师可以从事下列业务：

**Article 28** Lawyers may undertake the following businesses:

（一）接受自然人、法人或者其他组织的委托，担任法律顾问；

(1) accept entrustment by a natural person, legal person or any other organization to act as a legal consultant;

（二）接受民事案件、行政案件当事人的委托，担任代理人，参加诉讼；

(2) accept entrustment by a party to a civil lawsuit or an administrative lawsuit to act as a litigation agent and participate in litigation;

（三）接受刑事案件犯罪嫌疑人、被告人的委托或者依法接受法律援助机构的指派，担任辩护人，接受自诉案件自诉人、公诉案件被害人或者其近亲属的委托，担任代理人，参加诉讼；

(3) accept entrustment by a criminal suspect or a defendant of a criminal lawsuit or accept assignment by the legal aid agency pursuant to the law to act as defense counsel, accept entrustment by a private prosecutor of a private prosecution case, a victim of a public prosecution case or his/her immediate relative to act as agent ad litem and participate in litigation;

(4) accept entrustment to appeal as a litigation agent in various types of lawsuits;

(5) accept entrustment to participate in mediation and arbitration proceedings;

(6) accept entrustment to provide non-litigious legal services; and

(7) provide the relevant legal advice and draft litigation documents

（四）接受委托，代理各类诉讼案件的申诉；

（五）接受委托，参加调解、仲裁活动；

（六）接受委托，提供非诉讼法律服务；

（七）解答有关法律询问、代写诉讼文书和有关法律事务的其他文书。

and other legal documents.

**第二十九条** 律师担任法律顾问的，应当按照约定为委托人就有关法律问题提供意见，草拟、审查法律文书，代理参加诉讼、调解或者仲裁活动，办理委托的其他法律事务，维护委托人的合法权益。

**Article 29** A lawyer who acts as a legal consultant shall provide opinion on legal issues, draft and review legal documents, act as a litigation agent in litigation, mediation or arbitration, handle other entrusted legal matters pursuant to the agreement and safeguard the legitimate rights and interests of the client.

**第三十条** 律师担任诉讼法律事务代理人或者非诉讼法律事务代理人的，应当在受委托的权限内，维护委托人的合法权益。

**Article 30** A lawyer who acts as a litigation agent or an agent in a non-litigious matter shall safeguard the legitimate rights and interests of the client within the scope of entrusted authority.

**第三十一条** 律师担任辩护人的，应当根据事实和法律，提出犯罪嫌疑人、被告人无罪、罪轻或者

**Article 31** A lawyer acting as a defense counsel shall, based on the facts and the law, present materials and opinions that the criminal suspect or the defendant is innocent or argue for mitigation or exemption from criminal liability, protect the

减轻、免除其刑事责任的材料和意见，维护犯罪嫌疑人、被告人的诉讼权利和其他合法权益。

**litigation rights and other legitimate rights and interests of the criminal suspect or the defendant.**

**第三十二条** 委托人可以拒绝已委托的律师为其继续辩护或者代理，同时可以另行委托律师担任辩护人或者代理人。

**Article 32** A client may refuse to have his/her lawyer to continue acting as his/her defense counsel or litigation agent and may engage another lawyer to act as his/her defense counsel or litigation agent. Upon accepting an entrustment, a lawyer shall not refuse to defend or represent the client without a proper reason. However, a lawyer shall have the right to refuse to defend or represent a client if the entrusted matter is illegal or the client is making use of the services provided by the lawyer to engage in illegal activities or the client has intentionally concealed important facts relating to the case.

律师接受委托后，无正当理由的，不得拒绝辩护或者代理。但是，委托事项违法、委托人利用律师提供的服务从事违法活动或者委托人故意隐瞒与案件有关的重要事实的，律师有权拒绝辩护或者代理。

**第三十三条** 律师担任辩护人的，有权持律师执业证书、律师事务所证明和委托书或者法律援助公函，依照刑事诉讼法的规定会见在押或者被监视居住的犯罪嫌疑人、被告人。辩护律师会见犯罪嫌疑人、被告人时不被监听。

**Article 33** A lawyer acting as a defense counsel shall have the right to present his/her lawyer's practicing certificate, proof of law firm and power of attorney or the legal aid letter to meet with the criminal suspect or the defendant who is placed in custody or residential surveillance pursuant to the provisions of the Criminal Procedure Law. The meeting between a defense counsel and the criminal suspect or the defendant shall not be tapped.

**第三十四条** 律师担任辩护人的，自人民检察院对案件审查起诉

**Article 34** A lawyer acting as a defense counsel shall, with effect from the date of examination and prosecution of the case by the People's Procuratorate, have the right to inspect,

之日起，有权查阅、摘抄、复制本案的案卷材料。

**extract and make copies of archival materials of the case.**

**第三十五条** 受委托的律师根据案情的需要，可以申请人民检察院、人民法院收集、调取证据或者申请人民法院通知证人出庭作证。

**Article 35** An entrusted lawyer may, based on the needs of the case, apply to the People's Procuratorate or the People's Court to gather evidence or apply to the People's Court to summon witnesses to testify in court. A lawyer who proceeds to gather evidence on his/her own may present his/her lawyer practicing certificate and proof of the law firm where he/she practices to the relevant organizations or individuals to investigate or handle the relevant legal matters.

律师自行调查取证的，凭律师执业证书和律师事务所证明，可以向有关单位或者个人调查与承办法律事务有关的情况。

**第三十六条** 律师担任诉讼代理人或者辩护人的，其辩论或者辩护的权利依法受到保障。

**Article 36** For a lawyer who acts as a litigation agent or a defense counsel, his/her right to argue or defend shall be protected by the law.

**第三十七条** 律师在执业活动中的人身权利不受侵犯。

**Article 37** The personal right of lawyers in their practicing activities shall not be infringed. Lawyers will not be pursued for legal liability for their acting or defense opinions expressed in court, except for the opinions that jeopardize national security, maliciously defame others or seriously disturb court order.

律师在法庭上发表的代理、辩护意见不受法律追究。但是，发表危害国家安全、恶意诽谤他人、严重扰乱法庭秩序的言论除外。

Where a lawyer is suspected of committing a crime during his/her participation in litigation activities, the investigation agency shall promptly notify the law firm he serves or the bar association of which he/she is a member; where the lawyer is detained or arrested pursuant to the law, the investigation agency shall notify his/her family members pursuant to the provisions of the Criminal Procedure Law.

律师在参与诉讼活动中涉嫌犯罪的，侦查机关应当及时通知其所在的律师事务所或者所属的律师协

会；被依法拘留、逮捕的，侦查机关应当依照刑事诉讼法的规定通知该律师的家属。

**第三十八条** 律师应当保守在执业活动中知悉的国家秘密、商业秘密，不得泄露当事人的隐私。

律师对在执业活动中知悉的委托人和其他人不愿泄露的有关情况和信息，应当予以保密。但是，委托人或者其他准备或者正在实施危害国家安全、公共安全以及严重危害他人人身安全的犯罪事实和信息除外。

**Article 38** A lawyer shall keep confidential any state secret or trade secret which has come into his/her knowledge in the course of his/her practice, and shall not divulge any privacy of the parties concerned. A lawyer shall keep confidential any related not-to-be-divulged information of a principal or any other person, except for the facts and information relating to the principal or any other person's criminal intent or conduct of jeopardizing national security, public safety and serious harm to others' personal safety.

**第三十九条** 律师不得在同一案件中为双方当事人担任代理人，不得代理与本人或者其近亲属有利益冲突的法律事务。

**Article 39** A lawyer shall not represent both parties to an action and shall not handle legal matters in which he/she or any of his/her close relatives has a conflict of interests.

**第四十条** 律师在执业活动中不得有下列行为：

（一）私自接受委托、收取费用，接受委托人的财物或者其他利益；

**Article 40** A lawyer shall not commit any of the following acts in his/her practice: (1) accept entrustment or collect fees privately or accept money or other goods from clients;

(2) covet and seek the disputed interests through the conveniences in the provision of legal services;

(3) accept money or other benefits from the other party to an action or conspire with the other party to an action or a third party to harm



（二）利用提供法律服务的便利牟取当事人争议的权益；

（三）接受对方当事人的财物或者其他利益，与对方当事人或者第三人恶意串通，侵害委托人的权益；

（四）违反规定会见法官、检察官、仲裁员以及其他有关工作人员；

（五）向法官、检察官、仲裁员以及其他有关工作人员行贿，介绍贿赂或者指使、诱导当事人行贿，或者以其他不正当方式影响法官、检察官、仲裁员以及其他有关工作人员依法办理案件；

（六）故意提供虚假证据或者威胁、利诱他人提供虚假证据，妨碍对方当事人合法取得证据；

（七）煽动、教唆当事人采取扰乱公共秩序、危害公共安全等非法手段解决争议；

the interests of a client;

(4) meet judges, prosecutors, arbitrators or any other related staff member in violation of the provisions;

(5) offer bribes to judges, prosecutors, arbitrators or any other related staff members, incite or induce a party to an action to offer bribes or use improper means to influence judges, prosecutors, arbitrators or any other related staff members from handling a case pursuant to the law;

(6) intentionally provide false evidence or threaten or induce others to provide false evidence or hinder the other party to an action from obtaining evidence legitimately;

(7) incite or instigate a party to an action to resolve dispute through illegal means such as disruption of public order and causing harm to public safety; or

(8) disrupt the proceedings of a court or an arbitration tribunal or litigation or arbitration proceedings.



（八）扰乱法庭、仲裁庭秩序，干扰诉讼、仲裁活动的正常进行。

**第四十一条** 曾经担任法官、检察官的律师，从人民法院、人民检察院离任后二年内，不得担任诉讼代理人或者辩护人。

**Article 41** A lawyer who has held the position of a judge or a prosecutor shall not act as a litigation agent or a defense counsel within two years from leaving the post in the People's Court or the People's Procuratorate.

**第四十二条** 律师、律师事务所应当按照国家规定履行法律援助义务，为受援人提供符合标准的法律服务，维护受援人的合法权益。

**Article 42** Lawyers and law firms shall perform legal aid obligations pursuant to the provisions of the State, provide legal services which comply with the standards to legal aid users and safeguard the legitimate rights and interests of legal aid users.

## 第五章 律师协会

## Chapter V Bar Association

**第四十三条** 律师协会是社会团体法人，是律师的自律性组织。

**Article 43** A bar association is a social institution legal person and a self-regulatory organisation of lawyers. The All China Lawyers Association is the national bar association. Local bar associations are established at provinces, autonomous regions and centrally-administered municipalities; where necessary, bar associations may be established at municipalities which are divided into districts.

全国设立中华全国律师协会，省、自治区、直辖市设立地方律师协会，设区的市根据需要可以设立地方律师协会。

**第四十四条** 全国律师协会章程由全国会员代表大会制定，报国务院司法行政部门备案。

**Article 44** The articles of association of the All China Lawyers Association shall be formulated by the national members' congress and shall be filed with the judicial administrative department of the State Council for records. The articles of association of local bar associations shall be formulated by the local members' congress and shall be filed with the judicial

地方律师协会章程由地方会员代表大会制定，报同级司法行政部门备案。地方律师协会章程不得与全国律师协会章程相抵触。

administrative department of the same level for records. The articles of association of local bar associations shall not contradict with the articles of association of the All China Lawyers Association.

**第四十五条** 律师、律师事务所应当加入所在地的地方律师协会。加入地方律师协会的律师、律师事务所，同时是全国律师协会的会员。

**Article 45** Lawyers and law firms shall join the local bar association at their location. Lawyers and law firms that are members of local bar associations are members of the All China Lawyers Association. Members of bar associations shall enjoy the rights stipulated in the articles of association of the bar association and perform the obligations stipulated by the articles of association of the bar association.

律师协会会员享有律师协会章程规定的权利，履行律师协会章程规定的义务。

**第四十六条** 律师协会应当履行下列职责：

**Article 46** A bar association shall perform the following duties: (1) safeguard legitimate practice of lawyers and legitimate rights and interests of lawyers;

（一）保障律师依法执业，维护律师的合法权益；

(2) consolidate and facilitate exchange of work experience of lawyers;

（二）总结、交流律师工作经验；

(3) formulate industry norms and penalty rules;

（三）制定行业规范和惩戒规则；

(4) organize vocational training and conduct courses on code of ethics and practice discipline for lawyers and examine practice activities of lawyers;

（四）组织律师业务培训和职

(6) implement awards and penalties for lawyers and law firms;

业道德、执业纪律教育，对律师的  
执业活动进行考核；

（五）组织管理申请律师执业  
人员的实习活动，对实习人员进行  
考核；

（六）对律师、律师事务所实  
施奖励和惩戒；

（七）受理对律师的投诉或者  
举报，调解律师执业活动中发生的  
纠纷，受理律师的申诉；

（八）法律、行政法规、规章  
以及律师协会章程规定的其他职  
责。

律师协会制定的行业规范和惩  
戒规则，不得与有关法律、行政法  
规、规章相抵触。

(7) accept and handle complaints against lawyers, mediate  
disputes arising in the course of lawyers' practice and accept and  
handle complaints lodged by lawyers; and

(8) perform any other duties stipulated by the laws, administrative  
regulations and rules and the articles of association of the bar  
association.

The industry norms and penalty rules of the bar association shall  
not contradict with the relevant laws, administrative rules and rules.

## 第六章 法律责任

## Chapter VI Legal Liability

**第四十七条** 律师有下列行为  
之一的，由设区的市级或者直辖市  
的区人民政府司法行政部门给予警  
告，可以处五千元以下的罚款；有

**Article 47** A lawyer who has committed any of the following  
acts shall be subject to a warning from the judicial  
administrative department of the People's Government of a  
municipality which is divided into districts or the People's  
Government of a centrally-administered municipality and may  
be subject to a fine of not more than 5,000 yuan; illegal

违法所得的，没收违法所得；情节严重的，给予停止执业三个月以下的处罚：

（一）同时在两个以上律师事务所执业的；

（二）以不正当手段承揽业务的；

（三）在同一案件中为双方当事人担任代理人，或者代理与本人及其近亲属有利益冲突的法律事务的；

（四）从人民法院、人民检察院离任后二年内担任诉讼代理人或者辩护人的；

（五）拒绝履行法律援助义务的。

**income shall be confiscated; where the case is serious, the lawyer shall be suspended from practice for a period of not more than three months: (1) where he/she practices in two or more law firms at the same time;**

**(2) where he/she solicits business through improper means;**

**(3) where he/she represents both parties to an action or handles legal matters in which he/she and his/her close relatives have a conflict of interests;**

**(4) where he/she acts as a litigation agent or a defense counsel within two years from leaving a post in a People's Court or a People's Procuratorate; or**

**(5) where he/she refuses to perform legal aid obligations.**

#### **第四十八条** 律师有下列行为

之一的，由设区的市级或者直辖市的区人民政府司法行政部门给予警告，可以处一万元以下的罚款；有违法所得的，没收违法所得；情节严重的，给予停止执业三个月以上

**Article 48 A lawyer who has committed any of the following acts shall be subject to a warning from the judicial administrative department of the People's Government of a municipality which is divided into districts or the People's Government of a centrally-administered municipality and may be subject to a fine of not more than 10,000 yuan; illegal income shall be confiscated; where the case is serious, the lawyer shall be suspended from practice for a period of more than three months but less than six months: (1) where he/she**

六个月以下的处罚：

（一）私自接受委托、收取费用，接受委托人财物或者其他利益的；

（二）接受委托后，无正当理由，拒绝辩护或者代理，不按时出庭参加诉讼或者仲裁的；

（三）利用提供法律服务的便利牟取当事人争议的权益的；

（四）泄露商业秘密或者个人隐私的。

accepts entrustment or collects fees privately or accepts money or other goods from clients;

(2) where he/she has accepted entrustment but refuses to defend or represent a client without a proper reason or failed to be present in court on time to participate in litigation or arbitration;

(3) where he/she covets and seeks the disputed interests of the parties to an action through the conveniences in the provision of legal services; or

(4) where he/she divulges commercial secrets or personal privacy.

**第四十九条** 律师有下列行为之一的，由设区的市级或者直辖市的区人民政府司法行政部门给予停止执业六个月以上一年以下的处罚，可以处五万元以下的罚款；有违法所得的，没收违法所得；情节严重的，由省、自治区、直辖市人民政府司法行政部门吊销其律师执业证书；构成犯罪的，依法追究刑事责任：

（一）违反规定会见法官、检

**Article 49** A lawyer who has committed any of the following acts shall be subject to suspension of practice for a period of more than six months but less than one year as imposed by the judicial administrative department of the People's Government of a municipality which is divided into districts or the People's Government of a centrally-administered municipality and may be subject to a fine of not more than 50,000 yuan; illegal income shall be confiscated; where the case is serious, the judicial administrative department of the People's Government of the province, autonomous region or centrally-administered municipality shall revoke his/her lawyer practicing certificate; where the case constitutes a criminal offence, criminal liability shall be pursued in accordance with the law: (1) where he/she meets judges, prosecutors, arbitrators or any other related staff member in violation of the provisions or uses improper means to influence

- 察官、仲裁员以及其他有关工作人员，或者以其他不正当方式影响依法办理案件的；
- （二）向法官、检察官、仲裁员以及其他有关工作人员行贿，介绍贿赂或者指使、诱导当事人行贿的；
- （三）向司法行政部门提供虚假材料或者有其他弄虚作假行为的；
- （四）故意提供虚假证据或者威胁、利诱他人提供虚假证据，妨碍对方当事人合法取得证据的；
- （五）接受对方当事人财物或者其他利益，与对方当事人或者第三人恶意串通，侵害委托人权益的；
- （六）扰乱法庭、仲裁庭秩序，干扰诉讼、仲裁活动的正常进行的；
- （七）煽动、教唆当事人采取
- handling of a case;
- (2) where he/she offers bribes to judges, prosecutors, arbitrators or any other related staff members or incites or induces a party to an action to offer bribes;
- (3) where he/she provides false materials to the judicial administrative department or commits other fraudulent acts;
- (4) where he/she intentionally provides false evidence or threatens or induces others to provide false evidence or hinders the other party to an action from obtaining evidence legitimately;
- (5) where he/she accepts money or other benefits from the other party to an action or conspires with the other party to an action or a third party to harm the interests of a client;
- (6) where he/she disrupts the proceedings of a court or an arbitration tribunal or litigation or arbitration proceedings;
- (7) where he/she incites or instigates a party to an action to resolve dispute through illegal means such as disruption of public order and causing harm to public safety;
- (8) where he/she makes speeches which are detrimental to national security, malicious slander or severe disruption of the proceedings; or
- (9) where he/she divulges State secrets.
- In the case of a lawyer who is subject to criminal punishment for intentional crime, his/her lawyer practicing certificate shall be revoked by the judicial administrative department of the People's Government of the province, autonomous region or centrally-administered municipality.

扰乱公共秩序、危害公共安全等非  
法手段解决争议的；

（八）发表危害国家安全、恶  
意诽谤他人、严重扰乱法庭秩序的  
言论的；

（九）泄露国家秘密的。

律师因故意犯罪受到刑事处罚  
的，由省、自治区、直辖市人民政  
府司法行政部门吊销其律师执业证  
书。

**第五十条** 律师事务所有下列  
行为之一的，由设区的市级或者直  
辖市的区人民政府司法行政部门视  
其情节给予警告、停业整顿一个月  
以上六个月以下的处罚，可以处十  
万元以下的罚款；有违法所得的，  
没收违法所得；情节特别严重的，  
由省、自治区、直辖市人民政府司  
法行政部门吊销律师事务所执业证  
书：

（一）违反规定接受委托、收  
取费用的；

**Article 50** A law firm which has committed any of the following acts shall be subject to a warning from the judicial administrative department of the People's Government of a municipality which is divided into districts or the People's Government of a centrally-administered municipality and suspension of practice for a period of more than one month but less than six months and may be imposed a fine of not more than 100,000 yuan; illegal income shall be confiscated; where the case is particularly serious, the law firm practicing certificate shall be revoked by the judicial administrative department of the People's Government of the province, autonomous region or centrally-administered municipality: (1) where it accepts entrustment or collects fees in violation of the provisions;

(2) where it violates statutory procedures in handling major matters such as change of name, change of person-in-charge, amendment of articles of association, amendment of partnership agreement, change of address or change of partner etc.;

（二）违反法定程序办理变更名称、负责人、章程、合伙协议、住所、合伙人等重大事项的；

（三）从事法律服务以外的经营活动的；

（四）以诋毁其他律师事务所、律师或者支付介绍费等不正当手段承揽业务的；

（五）违反规定接受有利益冲突的案件的；

（六）拒绝履行法律援助义务的；

（七）向司法行政部门提供虚假材料或者有其他弄虚作假行为的；

（八）对本所律师疏于管理，造成严重后果的。

律师事务所因前款违法行为受到处罚的，对其负责人视情节轻重，给予警告或者处二万元以下的罚款。

(3) where it engages in business activities other than legal services;

(4) where it defames another law firm or any lawyer or pay introduction fee etc. to solicit business;

(5) where it violates the provisions in undertaking cases which have conflict of interests;

(6) where it refuses to perform legal aid obligations;

(7) where it provides false materials to the judicial administrative department or commits other fraudulent acts; or

(8) where it is negligent in its management and causes serious consequences.

In the case of a law firm which is punished for any of the aforesaid acts, the person-in-charge of the law firm shall be subject to a warning or a fine of not more than 20,000 yuan according to the extent of the offence.



**第五十一条** 律师因违反本法规定，在受到警告处罚后一年内又发生应当给予警告处罚情形的，由设区的市级或者直辖市的区人民政府司法行政部门给予停止执业三个月以上一年以下的处罚；在受到停止执业处罚期满后二年内又发生应当给予停止执业处罚情形的，由省、自治区、直辖市人民政府司法行政部门吊销其律师执业证书。

律师事务所因违反本法规定，在受到停业整顿处罚期满后二年内又发生应当给予停业整顿处罚情形的，由省、自治区、直辖市人民政府司法行政部门吊销律师事务所执业证书。

**第五十二条** 县级人民政府司法行政部门对律师和律师事务所的执业活动实施日常监督管理，对检查发现的问题，责令改正；对当事人的投诉，应当及时进行调查。县级人民政府司法行政部门认为律师和律师事务所的违法行为应当给予行政处罚的，应当向上级司法行政

**Article 51** A lawyer who was subject to warning or punishment for violation of the provisions of this Law commits an act within a year from such warning and punishment which renders it subject to warning and punishment shall be subject to suspension of practice for a period of more than three months but less than one year as imposed by the judicial administrative department of the People's Government of a municipality which is divided into districts or the People's Government of a centrally-administered municipality; where the lawyer commits an act within two years from the expiry of the period of suspended practice again which renders it subject to suspension of practice, the judicial administrative department of the People's Government of the province, autonomous region or centrally-administered municipality shall revoke his/her lawyer practicing certificate. Where a law firm which was subject to suspension of practice for violation of the provisions of this Law commits an act within two years from the expiry of the period of suspended practice again which renders it subject to suspension of practice, the judicial administrative department of the People's Government of the province, autonomous region or centrally-administered municipality shall revoke the law firm practicing certificate.

**Article 52** The judicial administrative department of county People's Governments shall supervise and administer over the practice activities of lawyers and law firms; and order the lawyer or law firm to rectify any problem discovered in the inspection; complaints lodged by a party concerned shall be promptly investigated. Where the judicial administrative department of a county People's Government deems that a lawyer or a law firm should be subject to administrative punishment for an illegal act, it shall recommend penalty measures to the higher level judicial administrative department.

部门提出处罚建议。

**第五十三条** 受到六个月以上停止执业处罚的律师，处罚期满后逾三年的，不得担任合伙人。

被吊销律师执业证书的，不得担任辩护人、诉讼代理人，但系刑事诉讼、民事诉讼、行政诉讼当事人的监护人、近亲属的除外。

**第五十四条** 律师违法执业或者因过错给当事人造成损失的，由其所在的律师事务所承担赔偿责任。律师事务所赔偿后，可以向有故意或者重大过失行为的律师追偿。

**第五十五条** 没有取得律师执业证书的人员以律师名义从事法律服务业务的，由所在地的县级以上地方人民政府司法行政部门责令停止非法执业，没收违法所得，处违法所得一倍以上五倍以下的罚款。

**第五十六条** 司法行政部门工作人员违反本法规定，滥用职权、

**Article 53** A lawyer who has been suspended from practice for more than six months shall not act as a partner within three years from the expiry of the period of suspended practice. A lawyer who has had his lawyer's practicing certificate revoked shall not act as a defense counsel or agent de litem, unless the lawyer is a guardian or close relative of the party to a criminal, civil or administrative lawsuit.

**Article 54** Where the illegal practice or wrongdoing of a lawyer causes a party concerned to suffer losses, the law firm where he/she practices shall bear the compensation liability. Upon making such compensation, the law firm may seek recourse against the lawyer who has committed the intentional act or significant negligence.

**Article 55** A person who does not hold a lawyer practicing certificate but engages in legal services business in the name of a lawyer shall be ordered by the judicial administrative department of a local People's Government of county level and above at his/her location to stop the illegal practice; illegal income shall be confiscated and a fine ranging from one to five times of the illegal income shall be imposed.

**Article 56** For personnel of the judicial administrative department guilty of violating the provisions of this Law, abusing official powers or dereliction of duties, criminal liability shall be pursued in accordance with the law if the

玩忽职守，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予处分。

**case constitutes a criminal offence; where the case does not constitute a criminal offence, such personnel shall be punished pursuant to the law.**

## 第七章 附 则

## Chapter VII Supplementary Provisions

**第五十七条** 为军队提供法律服务的军队律师，其律师资格的取得和权利、义务及行为准则，适用本法规定。军队律师的具体管理办法，由国务院和中央军事委员会制定。

**Article 57** The provisions of this Law shall apply to military lawyers providing legal services for armed forces and their lawyer qualifications, rights and obligations and code of ethics. Detailed administrative measures on military lawyers shall be formulated by the State Council and the Central Military Commission.

**第五十八条** 外国律师事务所在中华人民共和国境内设立机构从事法律服务活动的管理办法，由国务院制定。

**Article 58** The administrative measures on establishment of organizations in China by foreign law firms to provide legal services shall be formulated by the State Council.

**第五十九条** 律师收费办法，由国务院价格主管部门会同国务院司法行政部门制定。

**Article 59** The measures on fees and charges of lawyers shall be formulated jointly by the pricing department and the judicial administrative department of the State Council.

**第六十条** 本法自 2008 年 6 月 1 日起施行。

**Article 60** This Law shall be effective 1 June 2008.

中华人民共和国律师法（2017 修正）



扫一扫，手机阅读更方便

# **Exhibit B-2**

## 关于印发加入修正案内容的 《律师执业行为规范（试行）》的通知

发 文 机 关 ： 中华全国律师协会	<b>Promulgated by:</b>	the All China Lawyers Association
发 布 日 期 ： 2018. 12. 13	<b>Promulgation Date:</b>	2018.12.13
生 效 日 期 ： 2018. 12. 13	<b>Effective Date:</b>	2018.12.13
时 效 性 ： 现行有效	<b>Validity Status:</b>	Effective
文 号 ： 律发通〔2018〕58 号	<b>Document No.:</b>	Lv Fa Tong [2018] No. 58

### 关于印发加入修正案内容的 《律师执业行为规范（试行）》的通知

律发通〔2018〕58 号

各省、自治区、直辖市律师协会，新疆生产建设兵团律师协会：

《律师执业行为规范修正案》已于 2017 年 1 月 8 日召开的第九届全国律协常务理事会第二次会议审议通过并正式印发，现将加入修正案内容的《律师执业行为规范（试行）》印发你们。

中华全国律师协会

2018 年 12 月 13 日

律师执业行为规范（试行）

### Notice on Promulgation of the Code of Practice for Lawyers (for Trial Implementation) Incorporating the Amendment

Lv Fa Tong [2018] No. 58

Lawyers associations of all provinces, autonomous regions and centrally-administered municipalities, and Lawyers Association of Xinjiang Production and Construction Corps,

Since the Amendment to the Code of Practice for Lawyers has been adopted upon deliberation at the second meeting of the ninth standing council of the All China Lawyers Association ("ACLA") held on January 8, 2017 and officially released, the Code of Practice for Lawyers (for Trial Implementation) incorporating the Amendment is hereby promulgated to you.

All China Lawyers Association

December 13, 2018

Code of Practice for Lawyers (for Trial Implementation)

(Adopted upon deliberation for trial implementation at the ninth meeting of the fifth standing council of the ACLA on March 20, 2004; revised at the second meeting of the seventh standing council of the ACLA on December 27, 2009; and adopted upon deliberation for trial implementation at the second meeting of the ninth standing council of the ACLA on January 8, 2017)

关于印发加入修正案内容的 《律师执业行为规范（试行）》的通知

（2004 年 3 月 20 日五届全国律协第九次常务理事会审议通过试行；2009 年 12 月 27 日七届二次理事会修订；2017 年 1 月 8 日第九届全国律协常务理事会第二次会议审议通过试行）

## 第一章 总则

## Chapter I General Provisions

**第一条** 为规范律师执业行为，保障律师执业权益，根据《中华人民共和国律师法》和《中华全国律师协会章程》制定本规范。

**Article 1** This Code is enacted in accordance with the Law of the People's Republic of China on Lawyers and the Articles of Association of the All China Lawyers Association, in order to regulate lawyers' practice and safeguard lawyers' practicing rights and interests.

**第二条** 本规范是律师规范执业行为的指引，是评判律师执业行为的行业标准，是律师自我约束的行为准则。

**Article 2** This Code serves as the guideline for lawyers to regulate their practice, the professional standard to judge lawyers' practice and the code of conduct for lawyers' self-restraint.

**第三条** 律师应当把拥护中国共产党领导、拥护社会主义法治作为从业的基本要求。

**Article 3** Lawyers shall uphold the leadership of the Communist Party of China and the socialist rule of law as the fundamental requirements for their legal practice.

**第四条** 律师执业行为违反本规范中强制性规范的，将依据相关规范性文件给予处分或惩戒。本规范中的任意性规范，律师应当自律

**Article 4** Any lawyer whose practice violates the mandatory rules herein shall be subject to punishment or disciplinary sanctions under the applicable regulatory documents. Lawyers shall comply with the discretionary rules herein in a self-disciplined manner.

关于印发加入修正案内容的 《律师执业行为规范（试行）》的通知

遵守。

**第五条** 本规范适用于作为中华全国律师协会会员的律师和律师事务所, 律师事务所其他从业人员参照本规范执行。

**Article 5** This Code applies to lawyers and law firms that are members of the ACLA and may apply mutatis mutandis to other employees of law firms.

## 第二章 律师执业基本行为规范

## Chapter II Basic Code of Practice for Lawyers

范

**第六条** 律师应当忠于宪法、法律, 恪守律师职业道德和执业纪律。

律师不得利用律师身份和以律师事务所名义炒作个案, 攻击社会主义制度, 从事危害国家安全活动, 不得利用律师身份煽动、教唆、组织有关利益群体, 干扰、破坏正常社会秩序, 不得利用律师身份教唆、指使当事人串供、伪造证据, 干扰正常司法活动。

**Article 6** A lawyer shall be faithful to the Constitution and laws and abide by professional ethics and practice disciplines. No lawyer may, by taking advantage of his/her status as a lawyer or in the name of a law firm, hype up individual cases, attack the socialist system or engage in activities that endanger national security; no lawyer may take advantage of his/her status of lawyer to incite, instigate or organize relevant interest groups to interfere with or undermine normal social order; and no lawyer may take advantage of his/her status of lawyer to instigate or instruct the parties concerned to collude in confession and falsify evidence or interfere with normal judicial activities.

**第七条** 律师应当诚实守信、勤勉尽责, 依据事实和法律, 维护当事人合法权益, 维护法律正确实施, 维护社会公平和正义。

**Article 7** A lawyer shall be honest, trustworthy, diligent and responsible, and shall, according to the facts and the law, safeguard the legitimate rights and interests of the parties, safeguard the correct implementation of the law and safeguard social fairness and justice.



关于印发加入修正案内容的 《律师执业行为规范（试行）》的通知

**第八条** 律师应当注重职业修养，自觉维护律师行业声誉。

**Article 8 A lawyer shall pay great attention to developing his/her professionalism and consciously safeguard the lawyers' professional reputation.**

**第九条** 律师应当保守在执业活动中知悉的国家秘密、商业秘密，不得泄露当事人的隐私。

**Article 9 A lawyer shall keep confidential the state secrets and trade secrets that he/she comes to know during his/her legal practice and may not divulge the privacy of the parties concerned.** A lawyer shall keep confidential the facts and information that he/she comes to know during his/her practice activities which his/her clients or other persons are reluctant to divulge, except for the facts and information regarding a crime that such clients or other persons are preparing or are currently committing, which endangers national security, public security and other crimes that seriously endanger the personal and property safety of others.

律师对在执业活动中知悉的委托人和其他人不愿泄露的情况和信  
息，应当予以保密。但是，委托人  
或者其他准备或者正在实施的危  
害国家安全、公共安全以及其他严  
重危害他人人身、财产安全的犯罪  
事实和信息除外。

**第十条** 律师应当尊重同行，  
公平竞争，同业互助。

**Article 10 Lawyers shall respect their peers, fairly compete and offer mutual assistance within the profession.**

**第十一条** 律师协会倡导律师  
关注、支持、积极参加社会公益事  
业。

**Article 11 Lawyers associations advocate that lawyers pay attention to, support and actively participate in social welfare undertakings.**

**第十二条** 律师在执业期间不  
得以非律师身份从事法律服务。

**Article 12 No lawyer may engage in legal services acting as a non-lawyer during his/her practice.** A lawyer may only practice in one law firm.

律师只能在一个律师事务所执  
业。

No lawyer may continue to practice during any period when he or she is subject to a penalty of suspension of practice or continue to practice in the name of the original law firm during the period when the law firm is subject to business suspension for rectification or

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律师不得在受到停止执业处罚期间继续执业，或者在律师事务所被停业整顿期间、注销后继续以原所名义执业。

after it is deregistered.

**第十三条** 律师不得在同一案件中为双方当事人担任代理人，不得代理与本人或者其近亲属有利益冲突的法律事务。

**Article 13 A lawyer may not represent both parties in the same case or represent parties in legal affairs when there is a conflict of interests with himself/herself or his/her close relatives.**

**第十四条** 律师担任各级人民代表大会常务委员会组成人员的，任职期间不得从事诉讼代理或者辩护业务。

**Article 14 During the term when a lawyer is serving as a member of the standing committee of a people's congress at any level, he/she shall not act as agent ad litem or defender.**

**第十五条** 律师不得为以下行为：

**Article 15 Lawyers are prohibited from the following acts: (1) engaging in activities which have an adverse social impact and are detrimental to the reputation of the legal profession;**

（一）产生不良社会影响，有损律师行业声誉的行为；

**(2) obstructing the state judicial or administrative authorities in exercising their powers;**

（二）妨碍国家司法、行政机关依法行使职权的行为；

**(3) joining institutions, organizations or social groups which are prohibited by law;**

（三）参加法律所禁止的机构、组织或者社会团体；

**(4) engaging in other activities in violation of laws, regulations, codes of practice of lawyers associations and professional ethics; or**

（四）其他违反法律、法规、

**(5) engaging in other activities in violation of social morality and seriously damaging lawyers' professional image.**

关于印发加入修正案内容的 《律师执业行为规范（试行）》的通知

律师协会行业规范及职业道德的行为。

（五）其他违反社会公德，严重损害律师职业形象的行为。

### 第三章 律师业务推广行为规范

### Chapter III Code of Conduct for Lawyers' Service Promotion

#### 第一节 业务推广原则

#### Section 1 Principles of Service Promotion

**第十六条** 律师和律师事务所推广律师业务，应当遵守平等、诚信原则，遵守律师职业道德和执业纪律，遵守律师行业公认的行业准则，公平竞争。

**Article 16** In promoting legal services, lawyers and law firms shall comply with the principles of equality and good faith, lawyers' professional ethics and practice disciplines and industry standards generally accepted by the legal profession and compete in a fair manner.

**第十七条** 律师和律师事务所应当通过提高自身综合素质、提高法律服务质量、加强自身业务竞争能力的途径，开展、推广律师业务。

**Article 17** Lawyers and law firms shall carry out and promote legal services by means of improving their own comprehensive quality, enhancing the quality of legal services and strengthening the competitiveness of their services.

**第十八条** 律师和律师事务所可以依法以广告方式宣传律师和律师事务所以及自己的业务领域和专业特长。

**Article 18** Lawyers and law firms may lawfully promote lawyers, law firms as well as their service fields and professional expertise by advertisement.

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**第十九条** 律师和律师事务所

可以通过发表学术论文、案例分析、专题解答、授课、普及法律等活动，宣传自己的专业领域。

**Article 19** Lawyers and law firms may promote their areas of expertise through academic paper publishing, case studies, Q&A on special topics, lectures, legal awareness education and other activities.

**第二十条** 律师和律师事务所

可以通过举办或者参加各种形式的专题、专业研讨会，宣传自己的专业特长。

**Article 20** Lawyers and law firms may organize or participate in various forms of thematic or specialized seminars to promote their professional expertise.

**第二十一条** 律师可以以自己

或者其任职的律师事务所名义参加各种社会公益活动。

**Article 21** Lawyers may participate in various public benefit activities in the name of themselves or of the law firms they work for.

**第二十二条** 律师和律师事务

所在业务推广中不得为不正当竞争行为。

**Article 22** Lawyers and law firms may not commit any unfair competition acts when promoting their services.

**第二节 律师业务推广广告**

**Section 2 Advertisement for Legal Service Promotion**

**第二十三条** 律师和律师事务

所为推广业务，可以发布使社会公众了解律师个人和律师事务所法律服务业务信息的广告。

**Article 23** In order to promote their services, lawyers or law firms may publish advertisements to make the public understand the legal services of individual lawyers or law firms.

**第二十四条** 律师发布广告应

当遵守国家法律、法规、规章和本规范。

**Article 24** In publishing an advertisement, lawyers shall comply with laws, regulations and rules of the State and this Code.

**第二十五条** 律师发布广告应当具有可识别性，应当能够使社会公众辨明是律师广告。

**Article 25** Any advertisement published by lawyers shall be identifiable and can make the public recognize it as a lawyer advertisement.

**第二十六条** 律师广告可以以律师个人名义发布，也可以以律师事务所名义发布。以律师个人名义发布的律师广告应当注明律师个人所任职的执业机构名称，应当载明律师执业证号。

**Article 26** A lawyer advertisement may be published either in the name of an individual lawyer or a law firm. The lawyer advertisement published in the name of an individual lawyer shall indicate the name of the practicing organization which such lawyer works for and set forth such lawyer's practice certificate number.

**第二十七条** 具有下列情况之一的，律师和律师事务所不得发布律师广告：

**Article 27** Lawyers and law firms may not publish a lawyer advertisement if: (1) they fail to pass the annual assessment; (2) they are subject to suspension of practice or business suspension for rectification; or (3) it has been less than one year since they were subject to a circulated notice of criticism or public condemnation.

（一）没有通过年度考核的；

（二）处于停止执业或停业整顿处罚期间的；

（三）受到通报批评、公开谴责未满一年的。

**第二十八条** 律师个人广告的内容，应当限于律师的姓名、肖像、年龄、性别，学历、学位、专业、律师执业许可日期、所任职律师事务所名称、在所任职律师事务所

**Article 28** The content of an advertisement published by an individual lawyer shall be limited to: the lawyer's name, portrait, age, gender, education, academic degree, major or practice licensing date, or the name of the law firm that the lawyer works for or term of practice in the said law firm; fee rate, contact details; scope of legal services accessed by the society; and practicing performance.

所的执业期限；收费标准、联系方式；依法能够向社会提供的法律服务业务范围；执业业绩。

### **第二十九条 律师事务所广告**

的内容应当限于律师事务所名称、住所、电话号码、传真号码、邮政编码、电子信箱、网址；所属律师协会；所内执业律师及依法能够向社会提供的法律服务业务范围简介；执业业绩。

**Article 29** The content of an advertisement published by a law firm shall be limited to: the law firm's name, address, telephone number, fax number, postal code, e-mail or website; the lawyers association in which it is a member; brief introduction to the law firm's practicing lawyers and the scope of legal services provided to the society; and practicing performance.

### **第三十条 律师和律师事务所**

不得以有悖律师使命、有损律师形象的方式制作广告，不得采用一般商业广告的艺术夸张手段制作广告。

**Article 30** Lawyers and law firms may not produce an advertisement in a manner contrary to lawyers' mission or detrimental to lawyers' image, nor may they produce an advertisement by means of artistic exaggeration used in general commercial advertisements.

### **第三十一条 律师广告中不得**

出现违反所属律师协会有关律师广告管理规定的内容。

**Article 31** A lawyer advertisement may not contain any content that violates the administrative provisions on lawyer advertisements of the lawyers associations.

## **第三节 律师宣传**

## **Section 3 Lawyers Promotion**

### **第三十二条 律师和律师事务所**

不得进行歪曲事实和法律，或者可能使公众对律师产生不合理期望

**Article 32** Lawyers and law firms may not engage in promotional activities by distorting the facts or law or by likely causing the public to have unreasonable expectations of lawyers.

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的宣传。

**第三十三条** 律师和律师事务所可以宣传所从事的某一专业法律服务领域，但不得自我声明或者暗示其被公认或者证明为某一专业领域的权威或专家。

**Article 33** Lawyers and law firms may promote a certain professional legal service field they engage in, but may not self-declare or imply that they are recognized as or proven to be an authority or expert in a particular professional field.

**第三十四条** 律师和律师事务所不得进行律师之间或者律师事务所之间的比较宣传。

**Article 34** Lawyers and law firms may not engage in promotional activities by making comparisons between lawyers or between law firms.

**第四章 律师与委托人或当事人的关系规范**

**Chapter IV** Code for Lawyer-Client/Party Relationship

**第一节 委托代理关系**

**Section 1** Principal-Agent Relationship

**第三十五条** 律师应当与委托人就委托事项范围、内容、权限、费用、期限等进行协商，经协商达成一致后，由律师事务所与委托人签署委托协议。

**Article 35** Lawyers shall negotiate with their client on the scope, details, powers, charges, term, etc. of the entrusted matters. After consensus is reached upon such negotiation, an entrustment agreement will be entered into between the law firm and such client.

**第三十六条** 律师应当充分运用专业知识，依照法律和委托协议完成委托事项，维护委托人或者当事人的合法权益。

**Article 36** Lawyers shall make full use of their professional knowledge to complete the entrusted matters in accordance with the law and the entrustment agreement, in order to protect the legitimate rights and interests of their clients or of the parties.



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**第三十七条** 律师与所任职律师事务所所有权根据法律规定、公平正义及律师执业道德标准，选择实现委托人或者当事人目的的方案。

**Article 37** Lawyers and law firms that they work for have the right to choose a plan to achieve the objectives of their client or a party, as required by law, fairness and justice, and ethical standards for lawyers' practice.

**第三十八条** 律师应当严格按照法律规定的期间、时效以及与委托人约定的时间办理委托事项。对委托人了解委托事项办理情况的要求，应当及时给予答复。

**Article 38** Lawyers shall perform the entrusted matters in strict accordance with the time period, time limit under the law, as well as the time agreed upon with their client. If a client requests any information regarding the handling of the entrusted matters, a prompt reply shall be given.

**第三十九条** 律师应当建立律师业务档案，保存完整的工作记录。

**Article 39** Lawyers shall establish an archive of lawyers' services to keep a complete record of the work.

**第四十条** 律师应谨慎保管委托人或当事人提供的证据原件、原物、音像资料底版以及其他材料。

**Article 40** Lawyers shall keep with care the original evidence, original articles, original audio-visual documents and other materials provided by a client or party concerned.

**第四十一条** 律师接受委托后，应当在委托人委托的权限内开展执业活动，不得超越委托权限。

**Article 41** Upon accepting an engagement, lawyers shall carry out practicing activities within, but not beyond, the powers as delegated by their clients.

**第四十二条** 律师接受委托后，无正当理由不得拒绝辩护或者代理、或以其他方式终止委托。委托事项违法、委托人利用律师提供

**Article 42** Upon accepting an engagement, lawyers may not, without justifiable reasons, refuse to defend or represent their clients, or otherwise terminate the engagement. Where the entrusted matters are illegal, a client uses lawyers' services to engage in illegal acts, or a client intentionally conceals material facts relating to the case, the lawyers are entitled to inform such client and request such client to make



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的服务从事违法活动或者委托人故意隐瞒与案件有关的重要事实的，律师有权告知委托人并要求其整改，有权拒绝辩护或者代理、或以其他方式终止委托，并有权就已经履行事务取得律师费。

**rectifications, to refuse to defend or represent such client or otherwise terminate the engagement and to attorney's fees for the services rendered.**

**第四十三条** 律师在承办受托业务时，对已经出现的和可能出现的不可克服的困难、风险，应当及时通知委托人，并向律师事务所报告。

**Article 43 In performing entrusted services, lawyers shall promptly inform their clients and report to the law firm any insurmountable difficulties or risks that have arisen or may arise.**

## **第二节 禁止虚假承诺**

## **Section 2 Prohibition of False Commitments**

**第四十四条** 律师根据委托人提供的事实和证据，依据法律规定进行分析，向委托人提出分析性意见。

**Article 44 Lawyers provide analytical advice to their clients by making analysis under law based on the facts and evidence provided by their clients.**

**第四十五条** 律师的辩护、代理意见未被采纳，不属于虚假承诺。

**Article 45 Lawyers are not deemed to make false commitments if their defense or representation opinions are not adopted.**

**第三节 禁止非法牟取委托人权益**

## **Section 3 Prohibition of Illegal Reaping of Clients' Rights and Interests**

**第四十六条** 律师和律师事务

**Article 46 Lawyers and law firms may not seek any interests disputed by the parties by taking advantage of the provision**

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所不得利用提供法律服务的便利，  
牟取当事人争议的权益。

of legal services.

**第四十七条** 律师和律师事务所不得违法与委托人就争议的权益产生经济上的联系，不得与委托人约定将争议标的物出售给自己；不得委托他人為自己或为自己的近亲属收购、租赁委托人与他人发生争议的标的物。

**Article 47** Lawyers and law firms may not illegally establish economic connections with their clients regarding the disputed interests or agree with the clients to sell the subject matter to themselves, or delegate others to purchase or lease for themselves or their close relatives the subject matter in dispute between the clients and any other person.

**第四十八条** 律师事务所可以依法与当事人或委托人签订以回收款项或标的物为前提按照一定比例收取货币或实物作为律师费用的协议。

**Article 48** Law firms may lawfully sign an agreement with their client or a party, to receive payment of attorney's fees in currency or in kind based on a certain percentage of the funds or the subject matter recovered.

#### 第四节 利益冲突审查

#### Section 4 Review of Conflict of Interests

**第四十九条** 律师事务所应当建立利益冲突审查制度。律师事务所在接受委托之前，应当进行利益冲突审查并作出是否接受委托决定。

**Article 49** Law firms shall establish a system for review of conflict of interests. Before accepting an engagement, law firms shall review conflict of interests and decide whether or not to accept such engagement.

**第五十条** 办理委托事务的律师与委托人之间存在利害关系或利

**Article 50** Lawyers may not perform the entrusted services and shall take the initiative to request for the recusal, if they have an interest in or a conflict of interests with a client.

益冲突的，不得承办该业务并应当主动提出回避。

**第五十一条** 有下列情形之一的，律师及律师事务所不得与当事人建立或维持委托关系：

（一）律师在同一案件中为双方当事人担任代理人，或代理与本人或者其近亲属有利益冲突的法律事务的；

（二）律师办理诉讼或者非诉讼业务，其近亲属是对方当事人的法定代表人或者代理人的；

（三）曾经亲自处理或者审理过某一事项或者案件的行政机关工作人员、审判人员、检察人员、仲裁员，成为律师后又办理该事项或者案件的；

（四）同一律师事务所的不同律师同时担任同一刑事案件的被害人的代理人 and 犯罪嫌疑人、被告人的辩护人，但在该县区域内只有一家律师事务所且事先征得当事人同

**Article 51 Lawyers and law firms may not establish or maintain an engagement with a client, in any of the following circumstances:** (1) where lawyers represent both parties in the same case or represent parties in legal affairs having a conflict of interests with themselves or their close relatives;

(2) where, in relation to the litigation or non-litigation services, lawyers' close relatives are the legal representatives or agents of the opposing party;

(3) where lawyers, who were employees of administrative authorities, judicial officers, prosecutors or arbitrators and have personally handled or heard a matter or case, handle such matter or case again after becoming lawyers;

(4) where different lawyers from the same law firm act as the agent ad litem of the victim, and the defender of the suspect or the defendant concurrently in the same criminal case, except where there is only one law firm within a county and prior consent has been obtained from the parties;

(5) where both parties to a dispute are concurrently represented by different lawyers from the same law firm or the law firm or its employee is a party, and the opposing party is represented by a lawyer from such law firm, in civil litigation, administrative litigation or arbitration cases;

(6) where, in non-litigation services, the lawyers from the same law firm represent the parties who have conflicts of interests, unless the joint entrustment by such parties;

(7) where, after the termination of the engagement, the same law firm or the same lawyer accepts the engagement of the opposing party in the follow-up hearing or handling of the same case; or

意的除外；

（五）在民事诉讼、行政诉讼、仲裁案件中，同一律师事务所的不同律师同时担任争议双方当事人的代理人，或者本所或其工作人员为一方当事人，本所其他律师担任对方当事人的代理人的；

（六）在非诉讼业务中，除各方当事人共同委托外，同一律师事务所的律师同时担任彼此有利害关系的各方当事人的代理人的；

（七）在委托关系终止后，同一律师事务所或同一律师在同一案件后续审理或者处理中又接受对方当事人委托的；

（八）其他与本条第（一）至第（七）项情形相似，且依据律师执业经验和行业常识能够判断为应当主动回避且不得办理的利益冲突情形。

(8) other circumstances involving conflict of interests which are similar to the circumstances under Items (1) to (7) of this Article and in which, based on lawyers' practicing experience and common sense of the industry, it is able to judge that the recusal is required, and the engagement may not be accepted.

**第五十二条** 有下列情形之一的，律师应当告知委托人并主动提

**Article 52 Except where a client consents to his/her representation or continued services, a lawyer shall inform the client and take the initiative to request for recusal in any**

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出回避，但委托人同意其代理或者继续承办的除外：

（一）接受民事诉讼、仲裁案件一方当事人的委托，而同所的其他律师是该案件中对方当事人的近亲属的；

（二）担任刑事案件犯罪嫌疑人、被告人的辩护人，而同所的其他律师是该案件被害人的近亲属的；

（三）同一律师事务所接受正在代理的诉讼案件或者非诉讼业务当事人的对方当事人所委托的其他法律业务的；

（四）律师事务所与委托人存在法律服务关系，在某一诉讼或仲裁案件中该委托人未要求该律师事务所律师担任其代理人，而该律师事务所律师担任该委托人对方当事人的代理人的；

（五）在委托关系终止后一年内，律师又就同一法律事务接受与

**of the following circumstances:** (1) where such lawyer accepts the engagement of a party to a civil litigation or arbitration case, but another lawyer from the same law firm is a close relative of the opposing party;

(2) where such lawyer acts as the defender of the suspect or defendant in a criminal case, but another lawyer from the same law firm is a close relative of the victim of such case;

(3) where the same law firm accepts the engagement of other legal services from the opposing party to the litigation case or non-litigation services which is being represented by such law firm;

(4) where there exists a legal service relationship between the law firm and the client, such client does not request such law firm to represent him/her/it, but a lawyer from such law firm represents the opposing party of such client, in a litigation or arbitration case;

(5) where such lawyer accepts the engagement of the opposing party having interests in the former client with respect to the same legal affairs, within one year after the termination of the engagement with such former client; or

(6) other circumstances which are similar to those under Items (1) to (5) of this Article and can be judged based on lawyers' practicing experience and common sense of the industry.

When the above circumstances are discovered, such lawyer and law firm shall inform the client of the facts concerning the conflict of interests and the possible consequences thereof for it to decide whether or not to establish or maintain the engagement. The client, having decided to establish or maintain the engagement, shall sign a letter of informed consent, indicating that the party has been made aware of the basic facts concerning the conflict of interests and the possible legal consequences thereof, and the party has expressly agreed to establish or maintain the engagement with such law firm or lawyer.

原委托人有利害关系的对方当事人  
的委托的；

（六）其他与本条第（一）至  
第（五）项情况相似，且依据律师  
执业经验和行业常识能够判断的其  
他情形。

律师和律师事务所发现存在上  
述情形的，应当告知委托人利益冲  
突的事实和可能产生的后果，由委  
托人决定是否建立或维持委托关  
系。委托人决定建立或维持委托关  
系的，应当签署知情同意书，表明  
当事人已经知悉存在利益冲突的基  
本事实和可能产生的法律后果，以  
及当事人明确同意与律师事务所及  
律师建立或维持委托关系。

**第五十三条** 委托人知情并签  
署知情同意书以示豁免的，承办律  
师在办理案件的过程中应对各自委  
托人的案件信息予以保密，不得将  
与案件有关的信息披露给相对人的  
承办律师。

**Article 53** Where a client is informed of the facts and has signed a letter of informed consent to indicate the exemption, the lawyer performing the engaged services shall keep confidential the case information relevant to the respective client in the process of case handling and may not disclose the same to the lawyer performing the engaged services for the counterparty.

## 第五节 保管委托人财产

## Section 5 Custody of the Client's Property

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**第五十四条** 律师事务所可以与委托人签订书面保管协议，妥善保管委托人财产，严格履行保管协议。

**Article 54** Law firms may sign a written custody agreement with their clients to properly keep in custody their clients' property and strictly perform such custody agreement.

**第五十五条** 律师事务所受托保管委托人财产时，应当将委托人财产与律师事务所的财产、律师个人财产严格分离。

**Article 55** Law firms delegated to keep in custody their clients' property shall strictly separate such clients' property from the property of such law firms and of individual lawyers.

## **第六节 转委托**

## **Section 6 Re-delegation**

**第五十六条** 未经委托人同意，律师事务所不得将委托人委托的法律事务转委托其他律师事务所办理。但在紧急情况下，为维护委托人的利益可以转委托，但应当及时告知委托人。

**Article 56** Without the consent of a client, a law firm may not re-delegate the legal affairs delegated by the client to another law firm. However, re-delegation is allowed in the interests of the client in the event of emergency, provided that the client is promptly informed of the same.

**第五十七条** 受委托律师遇有突患疾病、工作调动等紧急情况不能履行委托协议时，应当及时报告律师事务所，由律师事务所另行指定其他律师继续承办，并及时告知委托人。

**Article 57** Where an entrusted lawyer becomes unable to fulfil the entrustment agreement in case of sudden illness, job transfer or other emergency, such lawyer shall promptly report the same to the law firm, so that it can appoint another lawyer to continue the entrusted services and promptly inform the client.

**第五十八条** 非经委托人的同

**Article 58** Without a client's consent, the expenditure of the client may not be increased as a result of the re-delegation.

意，不能因转委托而增加委托人的费用支出。

## 第七节 委托关系的解除与终止

## Section 7 Dissolution and Termination of Entrustment Relationship

**第五十九条** 有下列情形之一的，律师事务所应当终止委托关系：

**Article 59** A law firm shall terminate the entrustment relationship in any of the following circumstances: (1) where a client requests to terminate the entrustment agreement;

（一）委托人提出终止委托协议的；

(2) where the lawyer is subject to a penalty of revocation of practice certificate or suspension of practice, and the client does not agree to a change of lawyer upon consultation;

（二）律师受到吊销执业证书或者停止执业处罚的，经过协商，委托人不同意更换律师的；

(3) where a conflict of interests under Article 51 hereof is found;

（三）当发现有本规范第五十一条规定的利益冲突情形的；

(4) where the entrusted lawyer is unfit to continue to fulfil the entrustment agreement, and the client does not agree to a change of lawyer upon consultation; or

(5) where continued fulfilment of the entrustment agreement would violate the laws, regulations, rules or this Code.

（四）受委托律师因健康状况不适合继续履行委托协议的，经过协商，委托人不同意更换律师的；

（五）继续履行委托协议违反法律、法规、规章或者本规范的。

**第六十条** 有下列情形之一的，经提示委托人不纠正的，律师事务

**Article 60** A law firm may rescind the entrustment agreement if its client fails to make corrections upon receiving the notification, in any of the following circumstances: (1) where



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所可以解除委托协议：

（一）委托人利用律师提供的法律服务从事违法犯罪活动的；

（二）委托人要求律师完成无法实现或者不合理的目标的；

（三）委托人没有履行委托合同义务的；

（四）在事先无法预见的前提下，律师向委托人提供法律服务将会给律师带来不合理的费用负担，或给律师造成难以承受的、不合理的困难的；

（五）其他合法的理由的。

the client engages in illegal and criminal acts by taking advantage of the legal services provided by the lawyer;

(2) where the client requests the lawyer to complete the goals that cannot be achieved or that are unreasonable;

(3) where the client fails to fulfil its obligations under the entrustment agreement;

(4) where, provided that it is unforeseeable in advance, the lawyer's provision of legal services to the client will be an unreasonable cost burden on the lawyer, or will cause unbearable, unreasonable hardship to the lawyer; or

(5) where there is any other legitimate reason.

**第六十一条** 律师事务所依照本规范第五十九条、第六十条的规定终止代理或者解除委托的，委托人与律师事务所协商解除协议的，委托人单方终止委托代理协议的，律师事务所所有权收取已提供服务部分的费用。

**Article 61** Where a law firm terminates a proxy or entrustment pursuant to Articles 59 and 60 of this Code, the agreement is rescinded upon consultation between the client and the law firm or the client unilaterally terminates the entrustment agreement, the law firm is entitled to charge fees payable for the legal services having been provided.

**第六十二条** 律师事务所与委

**Article 62** Upon dissolving the engagement with a client, a law firm shall return the originals of the materials, physical

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托人解除委托关系后，应当退还当事人提供的资料原件、物证原物、视听资料底版等证据，并可以保留复印件存档。

**evidence, audio-visual materials and other evidence, as provided by the client and may keep photocopies thereof for archiving purposes.**

## 第五章 律师参与诉讼或仲裁规范

## Chapter V Code for Lawyers' Participation in Litigation or Arbitration

### 第一节 调查取证

### Section 1 Investigation and Evidence Collection

第六十三条 律师应当依法调查取证。

**Article 63 Lawyers shall lawfully conduct investigations and collect evidence.**

第六十四条 律师不得向司法机关或者仲裁机构提交明知是虚假的证据。

**Article 64 Lawyers may not knowingly submit false evidence to a judicial authority or arbitration body.**

第六十五条 律师作为证人出庭作证的，不得再接受委托担任该案的辩护人或者代理人出庭。

**Article 65 Where a lawyer testifies in court as a witness, such lawyer may not accept an engagement to act as a defender or represent a party in the same case.**

### 第二节 尊重法庭与规范接触司法人员

### Section 2 Code for Respect for Court and Contact with Judicial Officers in a Regulated Manner

第六十六条 律师应当遵守法庭、仲裁庭纪律，遵守出庭时间、举证时限、提交法律文书期限及其他程序性规定。

**Article 66 Lawyers shall abide by the discipline of the court and arbitral tribunal and observe the court appearance time, time limit for adducing evidence, deadline for submission of legal instruments and other procedural requirements.**

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**第六十七条** 在开庭审理过程中，律师应当尊重法庭、仲裁庭。

**Article 67** In the course of a hearing, lawyers shall respect the court or arbitral tribunal.

**第六十八条** 律师在执业过程中，因对事实真假、证据真伪及法律适用是否正确而与诉讼相对方意见不一致的，或者为了向案件承办人提交新证据的，与案件承办人接触和交换意见应当在司法机关内指定场所。

**Article 68** A lawyer shall approach or exchange views with the case handling person at the designated place within the judicial authorities in the course of legal practice, where such lawyer challenges the litigation counterparty's opinion as to whether the facts are true or false, whether the evidence is genuine or false or whether the application of law is correct, or for the purposes of submitting new evidence to the case handling person.

**第六十九条** 律师在办案过程中，不得与所承办案件有关的司法、仲裁人员私下接触。

**Article 69** In the course of case handling, lawyers may not approach in private the judicial or arbitration officers related to the case being handled.

**第七十条** 律师不得贿赂司法机关和仲裁机构人员，不得以许诺回报或者提供其他利益（包括物质利益和非物质形态的利益）等方式，与承办案件的司法、仲裁人员进行交易。

**Article 70** Lawyers may not bribe officers of judicial authorities and arbitration bodies, and shall not make a deal with the judicial or arbitration officers handling the case by promising returns or other benefits (including interests in material or non-material forms), etc. Lawyers may not commit bribery as an intermediary or instigate or induce a party to offer a bribe.

律师不得介绍贿赂或者指使、诱导当事人行贿。

### 第三节 庭审仪表和语态

### Section 3 Appearance and Voice in Court Hearings

**第七十一条** 律师担任辩护

**Article 71** When defending or representing a party in court or

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人、代理人参加法庭、仲裁庭审理，应当按照规定穿着律师出庭服装，佩戴律师出庭徽章，注重律师职业形象。

**arbitral tribunal hearings, lawyers shall be dressed in lawyers' attire in court, wear lawyers' badges as required and pay attention to lawyers' professional image.**

**第七十二条** 律师在法庭或仲裁庭发言时应当举止庄重、大方，用词文明、得体。

**Article 72** When speaking in a court or arbitral tribunal, lawyers shall behave in a solemn and elegant manner and use civilized and appropriate terms.

## **第六章 律师与其他律师的关系规范**

## **Chapter VI Code for Relationship between Lawyers**

### **第一节 尊重与合作**

### **Section 1 Respect and Cooperation**

**第七十三条** 律师与其他律师之间应当相互帮助、相互尊重。

**Article 73** Lawyers shall help each other and respect each other.

**第七十四条** 在庭审或者谈判过程中各方律师应当互相尊重，不得使用挖苦、讽刺或者侮辱性的语言。

**Article 74** In the process of court hearing or negotiation, lawyers of all sides shall respect each other, and may not use sarcastic, ironic or insulting language.

**第七十五条** 律师或律师事务所不得在公众场合及媒体上发表恶意贬低、诋毁、损害同行声誉的言论。

**Article 75** Lawyers or law firms may not make any statement in public places or the media which maliciously demeans, slanders or damages their peers' reputation.

**第七十六条** 律师变更执业机

**Article 76** When changing practicing organization, lawyers shall protect the interests of their clients and of the former law

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构时应当维护委托人及原律师事务所的利益；律师事务所在接受转入律师时，不得损害原律师事务所的利益。

**firm; when receiving the transfer of a lawyer, law firms may not damage the interests of the former law firm.**

**第七十七条** 律师与委托人发生纠纷的，律师事务所的解决方案应当充分尊重律师本人的意见，律师应当服从律师事务所解决纠纷的决议。

**Article 77** If there is a dispute between a lawyer and a client, the law firm's solution shall fully respect the views of the lawyer himself/herself, and the lawyer shall obey the law firm's resolution with respect to the said dispute.

## 第二节 禁止不正当竞争

## Section 2 Prohibition of Unfair Competition

**第七十八条** 律师和律师事务所不得采用不正当手段进行业务竞争，损害其他律师及律师事务所的声誉或者其他合法权益。

**Article 78** Lawyers and law firms may not use unfair means to compete for business, damaging the reputation or other legitimate rights and interests of other lawyers and law firms.

**第七十九条** 有下列情形之一的，属于律师执业不正当竞争行为：

**Article 79** Any of the following circumstances shall be deemed as unfair competition act in legal practice: (1) slandering or defaming the creditability or reputation of other lawyers or law firms;

（一）诋毁、诽谤其他律师或者律师事务所信誉、声誉；

(2) soliciting business at a fee rate lower than those of peers in the same region, or by promising kickbacks, gifts of money, property or other interests to clients, intermediaries or referees, without justifiable reasons;

（二）无正当理由，以低于同地区同行业收费标准为条件争揽业务，或者采用承诺给予客户、中介

(3) intentionally causing a dispute between the client and the lawyer representing such client;

(4) explicitly indicating or implying to the client that he/she or

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人、推荐人回扣、馈赠金钱、财物或者其他利益等方式争揽业务；

（三）故意在委托人与其代理律师之间制造纠纷；

（四）向委托人明示或者暗示自己或者其属的律师事务所与司法机关、政府机关、社会团体及其工作人员具有特殊关系；

（五）就法律服务结果或者诉讼结果作出虚假承诺；

（六）明示或者暗示可以帮助委托人达到不正当目的，或者以不正当的方式、手段达到委托人的目的。

his/her law firm has a special relationship with the judicial authorities, government agencies or social groups or their staff members;

(5) making false promises with respect to the results of legal services or litigation results; or

(6) explicitly indicating or implying that he/she may help the client to achieve improper objectives or achieve the objectives of the client through improper methods or means.

**第八十条** 律师和律师事务所在与行政机关、行业管理部门以及企业的接触中，不得采用下列不正当手段与同行进行业务竞争：

（一）通过与某机关、某部门、某行业对某一类的法律服务事务进行垄断的方式争揽业务；

**Article 80** In approaching the administrative authorities, industry regulators or enterprises, lawyers and law firms may not use the following unfair means to compete for business with their peers: (1) competing for or soliciting business by monopolizing a certain type of legal services with an authority, department or industry; or

(2) restricting the client to accepting a designated lawyer or law firm to provide legal services, thereby restricting any other lawyer or law firm from fair competition for business.

（二）限定委托人接受其指定的律师或者律师事务所提供法律服务，限制其他律师或律师事务所正当的业务竞争。

**第八十一条** 律师和律师事务所在与司法机关及司法人员接触中，不得采用利用律师兼有的其他身份影响所承办业务正常处理和审理的手段进行业务竞争。

**Article 81** When approaching the judicial authorities and judicial officers, lawyers and law firms may not compete for business by using other capacities of the lawyer to affect the normal handling and hearing of the engaged legal affairs.

**第八十二条** 依照有关规定取得从事特定范围法律服务的律师或律师事务所不得采取下列不正当竞争的行为：

（一）限制委托人接受经过法定机构认可的其他律师或律师事务所提供法律服务；

（二）强制委托人接受其提供的或者由其指定的律师提供的法律服务；

（三）对抵制上述行为的委托人拒绝、中断、拖延、削减必要的法律服务或者滥收费用。

**Article 82** Lawyers or law firms qualified for legal services within a specified scope in accordance with the applicable provisions may not commit the following unfair competition acts:

(1) restricting the client from accepting other lawyers or law firms recognized by statutory bodies to provide legal services;

(2) forcing the client to receive the legal services provided by them or provided by lawyers designated by them; or

(3) refusing, interrupting, delaying or reducing the necessary legal services for or overcharging fees to a client who resists the above acts.

关于印发加入修正案内容的 《律师执业行为规范（试行）》的通知

### 第八十三条 律师或律师事务所

所相互之间不得采用下列手段排挤竞争对手的公平竞争：

（一）串通抬高或者压低收费；

（二）为争揽业务，不正当获取其他律师和律师事务所收费报价或者其他提供法律服务的条件；

（三）泄露收费报价或者其他提供法律服务的条件等暂未公开的信息，损害相关律师事务所的合法权益。

**Article 83 Lawyers or law firms may not use the following means between each other to exclude fair competition by competitors:** (1) colluding to raise or lower service charges;

(2) improperly obtaining service charge quotations or other conditions for the provision of legal services by other lawyers and law firms for the purposes of soliciting business; or

(3) divulging information not yet made public, such as service charge quotations, or other conditions for the provision of legal services, damaging the legitimate rights and interests of relevant law firms.

### 第八十四条 律师和律师事务所

所不得擅自或者非法使用社会专有名称或者知名度较高的名称以及代表其名称的标志、图形文字、代号以混淆误导委托人。

本规范所称的社会特有名称和知名度较高的名称是指：

（一）有关政党、司法机关、行政机关、行业协会名称；

**Article 84 Lawyers and law firms may not confuse or mislead their clients by using, without authorization or illegally, proper names of public organizations, well-known names, or logos, graphic texts or codes representing their names.** For the purposes of this Code, proper names of public organizations and well-known names refer to:

(1) names of relevant political parties, judicial authorities, administrative authorities or industry associations;

(2) names of law schools or scientific research institutions with higher social popularity;

(3) names of well-known and highly reputable public figure who is not a lawyer; or

(4) names of well-known lawyers and law firms.



关于印发加入修正案内容的 《律师执业行为规范（试行）》的通知

（二）具有较高社会知名度的  
高等法学院校或者科研机构的名  
称；

（三）为社会公众共知、具有  
较高知名度的非律师公众人物名  
称；

（四）知名律师以及律师事务  
所名称。

**第八十五条** 律师和律师事务所不得伪造或者冒用法律服务荣誉称号。使用已获得的律师或者律师事务所法律服务荣誉称号的，应当注明获得时间和期限。律师和律师事务所不得变造已获得的荣誉称号用于广告宣传。律师事务所已撤销的，其原取得的荣誉称号不得继续使用。

**Article 85** Lawyers and law firms may not falsify or fraudulently use honorary titles of legal services. Where an honorary title awarded for legal services of lawyers or law firms is used, its awarding time and validity term shall be specified. Lawyers and law firms may not alter an awarded honorary title for advertising. Where a law firm has been cancelled, its honorary titles awarded may not be used any longer.

**第七章 律师与所任职的律师  
事务所关系规范**

**Chapter VII Code for Relationship Between Lawyers and Law  
Firms They Work For**

**第八十六条** 律师事务所是律师的执业机构。律师事务所对本所执业律师负有教育、管理和监督的

**Article 86** A law firm is an organization in which lawyers practice law. A law firm has duties to educate, manage and supervise its practicing lawyers.

关于印发加入修正案内容的 《律师执业行为规范（试行）》的通知

职责。

**第八十七条** 律师事务所应当建立健全执业管理、利益冲突审查、收费与财务管理、投诉查处、年度考核、档案管理、劳动合同管理等制度，对律师在执业活动中遵守职业道德、执业纪律的情况进行监督。

**Article 87** A law firm shall establish and improve practicing management, review of conflict of interests, service charge and financial management, complaints investigation and handling, annual assessment, archives management, labor contract management and other systems to supervise lawyers' compliance with professional ethics and practice disciplines in the course of their practice.

**第八十八条** 律师事务所应当依法保障律师及其他工作人员的合法权益，为律师执业提供必要的工作条件。

**Article 88** A law firm shall lawfully safeguard the legitimate rights and interests of lawyers and other personnel and provide necessary working conditions for lawyers in legal practice.

**第八十九条** 律师承办业务，由律师事务所统一接受委托，与委托人签订书面委托合同，按照国家规定统一收取费用。

**Article 89** For a lawyer to perform business, the law firm shall accept entrustment uniformly, sign written entrustment contracts with the client and uniformly charge service fees under state regulations.

**第九十条** 律师及律师事务所必须依法纳税。

**Article 90** Lawyers and law firms must pay taxes under the law.

**第九十一条** 律师事务所应当定期组织律师开展时事政治、业务学习，总结交流执业经验，提高律师执业水平。

**Article 91** Law firms shall arrange for their lawyers on a regular basis to study current political affairs and legal practice, summarize and exchange practicing experience and improve their lawyers' practice levels.

关于印发加入修正案内容的 《律师执业行为规范（试行）》的通知

**第九十二条** 律师事务所应当认真指导申请律师执业实习人员实习，如实出具实习鉴定材料和相关证明材料。

**Article 92** Law firms shall guide the internship of interns applying for law practice and faithfully issue internship assessment materials and relevant supporting materials.

**第九十三条** 律师事务所不得从事法律服务以外的经营活动。

**Article 93** Law firms may not engage in business activities other than legal services.

**第九十四条** 律师和律师事务所应当按照国家规定履行法律援助义务，为受援人提供法律服务，维护受援人的合法权益。

**Article 94** Lawyers and law firms shall fulfil their legal aid obligations as required by the state, provide legal services to the aided persons and protect their legitimate rights and interests.

**第九十五条** 律师事务所不得指派没有取得律师执业证书的人员或者处于停止执业处罚期间的律师以律师名义提供法律服务。

**Article 95** Law firms may not assign personnel without a practice certificate or lawyers subject to penalty of suspension of practice to provide legal services in the name of a lawyer.

**第九十六条** 律师事务所对其指派办理事务的律师辅助人员出现的错误，应当采取制止或者补救措施，并承担责任。

**Article 96** Law firms shall take prevention or remedial measures and assume liability for the mistakes of supporting staff assigned by it to handle relevant matters.

**第九十七条** 律师事务所所有义务对律师、申请律师执业实习人员在业务及职业道德等方面进行管

**Article 97** Law firms have duties to manage their lawyers and interns applying for law practice, in terms of law practice, professional ethics, etc.

理。

关于印发加入修正案内容的 《律师执业行为规范（试行）》的通知

## 第八章 律师与律师协会关系 规范

## Chapter VIII Code for Relationship Between Lawyers and Lawyers Associations

**第九十八条** 律师和律师事务所应当遵守律师协会制定的律师行业规范和规则。律师和律师事务所享有律师协会章程规定的权利，承担律师协会章程规定的义务。

**Article 98** Lawyers and law firms shall abide by the codes and rules formulated by the lawyers associations for the legal profession. Lawyers and law firms enjoy such rights and assume such obligations as set forth in the articles of association of lawyers associations.

**第九十九条** 律师应当参加、完成律师协会组织的律师业务学习及考核。

**Article 99** Lawyers shall participate in and complete the law practice training and examination organized by lawyers associations.

**第一百条** 律师参加国际性律师组织并成为其会员的，以及以中国律师身份参加境外会议等活动的，应当报律师协会备案。

**Article 100** Lawyers who join an international lawyers' organization to become its members or participate in an overseas meeting or other activities as China-certified lawyers shall file the above matters with the lawyers associations for the record.

**第一百零一条** 律师和律师事务所因执业行为成为刑、民事被告，或者受到行政机关调查、处罚的，应当向律师协会书面报告。

**Article 101** Lawyers and law firms that become criminal or civil defendants or are subject to investigation or punishment by administrative authorities as a result of practicing activities shall report the same to the lawyers associations in writing.

**第一百零二条** 律师应当积极参加律师协会组织的律师业务研究活动，完成律师协会布置的业务研究任务，参加律师协会组织的公益

**Article 102** Lawyers shall actively participate in law practice research activities organized by lawyers associations, complete law practice research tasks assigned by lawyers associations and participate in public benefit activities organized by lawyers associations.

活动。

**第一百零三条** 律师应当妥善处理律师执业中发生的纠纷，履行经律师协会调解达成的调解协议。

**Article 103** Lawyers shall properly settle disputes in the course of legal practice and perform the mediation agreement concluded upon the mediation of lawyers associations.

**第一百零四条** 律师应当执行律师协会就律师执业纠纷作出的处理决定。

**Article 104** Lawyers shall implement the handling decisions rendered by lawyers associations with respect to disputes in legal practice. Lawyers shall implement the punishment decisions rendered by lawyers associations in accordance with laws, regulations, rules, or articles of association or rules of lawyers associations.

律师应当履行律师协会依照法律、法规、规章及律师协会章程、规则作出的处分决定。

**第一百零五条** 律师应当按时缴纳会费。

**Article 105** Lawyers shall pay membership fees in a timely manner.

## 第九章 附则

## Chapter IX Supplementary Provisions

**第一百零六条** 律师和律师事务所违反本规范的，律师协会应当依据《律师协会会员违规行为处分规则（试行）》和相关行业规范性文件实施处分。

**Article 106** Lawyers and law firms violating this Code shall be punished by lawyers associations in accordance with the Rules on Punishing Violations of Members of Lawyers Associations (for Trial Implementation) and applicable regulatory documents for the legal profession.

**第一百零七条** 地方律师协会可以依据本规范，结合本地区情况制定实施细则。该实施细则与本规

**Article 107** Local lawyers associations may formulate implementing rules in accordance with this Code and based on local conditions. Such implementing rules may not conflict with this Code and become effective after being filed with the ACLA for the record.

关于印发加入修正案内容的 《律师执业行为规范（试行）》的通知

范不得冲突，并报全国律师协会备案后实施。

**第一百零八条** 本规范自颁布之日起施行。本规范以修正案的方式进行修改，修正案由常务理事会通过后试行，理事会通过后正式实施。

**Article 108** This Code shall come into force as of the date of promulgation. This Code will be modified in the form of an amendment which will be implemented on a trial basis after being adopted by the standing council and officially implemented after being adopted by the council.

**第一百零九条** 本规范由中华全国律师协会常务理事会解释。

**Article 109** This Code is subject to the interpretation by the standing council of the ACLA.



扫一扫，手机阅读更方便

# **Exhibit B-3**

中华人民共和国刑事诉讼法（2018 修正）

发 文 机 关：	全国人民代表大会常务委员会	Promulgated by:	Standing Committee of the National People's Congress
发 布 日 期：	2018. 10. 26	Promulgation Date:	2018.10.26
生 效 日 期：	2018. 10. 26	Effective Date:	2018.10.26
时 效 性：	现行有效	Validity Status:	Effective

中华人民共和国刑事诉讼法

（1979 年 7 月 1 日第五届全国人民代表大会第二次会议通过根据 1996 年 3 月 17 日第八届全国人民代表大会第四次会议《关于修改〈中华人民共和国刑事诉讼法〉的决定》第一次修正根据 2012 年 3 月 14 日第十一届全国人民代表大会第五次会议《关于修改〈中华人民共和国刑事诉讼法〉的决定》第二次修正根据 2018 年 10 月 26 日第十三届全国人民代表大会常务委员会第六次会议《关于修改〈中华人民共和国刑事诉讼法〉的决定》第三次修正）

第一编 总则

第一章 任务和基本原则

Criminal Procedure Law of the People's Republic of China  
(Amended in 2018)

(Adopted at the Second Session of the Fifth National People's Congress on 1 July 1979, amended for the first time in accordance with the Decision on Amending the Criminal Procedure Law of the People's Republic of China adopted at the Fourth Session of the Eighth National People's Congress on 17 March 1996, amended for the second time in accordance with the Decision on Amending the Criminal Procedure Law of the People's Republic of China adopted at the Fifth Session of the Eleventh National People's Congress on 14 March 2012, and amended for the third time in accordance with the Decision on Amending the Criminal Procedure Law of the People's Republic of China adopted at the Sixth Session of the Standing Committee of the 13th National People's Congress on 26 October 2018.)

Part I General Provisions

Chapter I Aims and Basic Principles



**第一条** 为了保证刑法的正确实施，惩罚犯罪，保护人民，保障国家和社会公共安全，维护社会主义社会秩序，根据宪法，制定本法。

**Article 1** This Law is enacted in accordance with the Constitution and for the purposes of ensuring correct enforcement of the Criminal Law, punishing crimes, protecting the people, safeguarding State and public security and maintaining socialist public order.

**第二条** 中华人民共和国刑事诉讼法的任务，是保证准确、及时地查明犯罪事实，正确应用法律，惩罚犯罪分子，保障无罪的人不受刑事追究，教育公民自觉遵守法律，积极同犯罪行为作斗争，维护社会主义法制，尊重和保障人权，保护公民的人身权利、财产权利、民主权利和其他权利，保障社会主义建设事业的顺利进行。

**Article 2** The aims of the Criminal Procedure Law of the People's Republic of China are to ensure the accurate and timely ascertainment of criminal facts and correct application of law, punish criminals, ensure that innocent people are not incriminated, raise citizens' awareness of abiding by law and combating crimes, safeguard the socialist legal system, respect and protect human rights, protect the personal rights, property rights, democratic rights and other rights of citizens, and ensure smooth socialist construction.

**第三条** 对刑事案件的侦查、拘留、执行逮捕、预审，由公安机关负责。检察、批准逮捕、检察机关直接受理的案件的侦查、提起公诉，由人民检察院负责。审判由人民法院负责。除法律特别规定的以外，其他任何机关、团体和个人都无权行使这些权力。

**Article 3** Public security organs shall be responsible for investigation, criminal detention, execution of arrests and preliminary inquiry in criminal cases. People's procuratorates shall be responsible for procuratorial work, approval of arrests, conducting investigation and initiating public prosecution of cases directly accepted by procuratorial authorities. People's courts shall be responsible for adjudication. Except as otherwise provided by law, no other authorities, organizations or individuals shall have the authority to exercise such power. In conducting criminal proceedings, people's courts, people's procuratorates and public security organs must strictly observe this Law and any relevant stipulations of other laws.

人民法院、人民检察院和公安机关进行刑事诉讼，必须严格遵守本法和其他法律的有关规定。

**第四条** 国家安全机关依照法律规定，办理危害国家安全的刑事案件，行使与公安机关相同的职权。

**Article 4** State security authorities shall, in accordance with law, handle cases of crimes that compromise national security, performing the same functions and powers as public security organs.

**第五条** 人民法院依照法律规定独立行使审判权，人民检察院依照法律规定独立行使检察权，不受行政机关、社会团体和个人的干涉。

**Article 5** People's courts shall exercise judicial power independently in accordance with law and people's procuratorates shall exercise procuratorial power independently in accordance with law, and they shall be free from interference by any administrative authority, public organization or individual.

**第六条** 人民法院、人民检察院和公安机关进行刑事诉讼，必须依靠群众，必须以事实为根据，以法律为准绳。对于一切公民，在适用法律上一律平等，在法律面前，不允许有任何特权。

**Article 6** In conducting criminal proceedings, people's courts, people's procuratorates and public security organs must rely on the masses, base themselves on facts and take law as the criterion. The law applies equally to all citizens and no privilege whatsoever is permissible before law.

**第七条** 人民法院、人民检察院和公安机关进行刑事诉讼，应当分工负责，互相配合，互相制约，以保证准确有效地执行法律。

**Article 7** In conducting criminal proceedings, people's Courts, people's procuratorates and public security organs shall divide responsibilities, coordinate their efforts and check each other to ensure the correct and effective enforcement of law.

**第八条** 人民检察院依法对刑事诉讼实行法律监督。

**Article 8** People's procuratorates shall, in accordance with law, exercise legal supervision over criminal proceedings.

**第九条** 各民族公民都有用本民族语言文字进行诉讼的权利。人民法院、人民检察院和公安机关对于不通晓当地通用的语言文字的诉讼参与人，应当为他们翻译。

**Article 9** Citizens of all nationalities shall have the right to use their native spoken and written languages in court proceedings. People's courts, people's procuratorates and public security organs shall provide interpretation for any litigant participant in the court proceedings who is not familiar with the spoken or written language commonly used in the locality. Where people of a minority nationality live in a concentrated community or where a number of nationalities live together in one area, court hearings shall be conducted in the spoken language commonly used in the locality, and judgments, notices and other documents shall be issued in the written language commonly used in the locality.

在少数民族聚居或者多民族杂居的地区，应当用当地通用的语言进行审讯，用当地通用的文字发布判决书、布告和其他文件。

**第十条** 人民法院审判案件，实行两审终审制。

**Article 10** In trying cases, people's courts shall apply the system whereby the second instance is final.

**第十一条** 人民法院审判案件，除本法另有规定的以外，一律公开进行。被告人有权获得辩护，人民法院有义务保证被告人获得辩护。

**Article 11** People's courts shall hear cases in public, unless otherwise provided by this Law. A defendant shall have the right to defence, and a people's court shall have the duty to guarantee his defense.

**第十二条** 未经人民法院依法判决，对任何人都不得确定有罪。

**Article 12** No person shall be found guilty without being judged as such by a people's court in accordance with law.

**第十三条** 人民法院审判案件，依照本法实行人民陪审员陪审

**Article 13** In trying cases, a people's court shall apply the system of people's assessors taking part in trials in accordance with this Law.

的制度。

**第十四条** 人民法院、人民检察院和公安机关应当保障犯罪嫌疑人、被告人和其他诉讼参与人依法享有的辩护权和其他诉讼权利。

诉讼参与人对于审判人员、检察人员和侦查人员侵犯公民诉讼权利和人身侮辱的行为，有权提出控告。

**Article 14** People's courts, people's procuratorates and public security organs shall safeguard the defense right and other procedural rights legally enjoyed by crime suspects, defendants and other litigation participants. Litigation participants shall have the right to file charges against judges, procurators and investigators whose acts infringe on their citizen's procedural rights or subject their persons to indignities.

**第十五条** 犯罪嫌疑人、被告人自愿如实供述自己的罪行，承认指控的犯罪事实，愿意接受处罚的，可以依法从宽处理。

**Article 15** A criminal suspect or a defendant who pleads guilty voluntarily, acknowledges the criminal facts he/she is accused of and is willing to accept punishment may be given lenient punishment in accordance with the law.

**第十六条** 有下列情形之一的，不追究刑事责任，已经追究的，应当撤销案件，或者不起诉，或者终止审理，或者宣告无罪：

（一）情节显著轻微、危害不大，不认为是犯罪的；

（二）犯罪已过追诉时效期限的；

**Article 16** In any of the following circumstances, no criminal responsibility shall be investigated; if investigation of a case has already been undertaken, the case shall be dismissed, or prosecution shall not be initiated, or the handling shall be terminated, or innocence shall be declared: (1) If an act is obviously minor, causing no serious harm, and is therefore not deemed as a crime;

(2) If the limitation period for criminal prosecution has expired;

(3) If an exemption of criminal punishment has been granted in a special amnesty decree;

(4) If the crime is to be handled only upon complaint according to the Criminal Law, but there has been no complaint or the complaint

（三）经特赦令免除刑罚的；

（四）依照刑法告诉才处理的犯罪，没有告诉或者撤回告诉的；

（五）犯罪嫌疑人、被告人死亡的；

（六）其他法律规定免于追究刑事责任的。

has been withdrawn;

(5) If the criminal suspect or defendant is deceased; or

(6) If other laws provide an exemption from investigation of criminal responsibility.

**第十七条** 对于外国人犯罪应当追究刑事责任的，适用本法的规定。

对于享有外交特权和豁免权的外国人犯罪应当追究刑事责任的，通过外交途径解决。

**Article 17 Provisions of this Law shall apply to foreigners who commit crimes for which criminal responsibility should be investigated.** If foreigners with diplomatic privileges and immunities commit crimes for which criminal responsibility should be investigated, those cases shall be resolved through diplomatic channels.

**第十八条** 根据中华人民共和国缔结或者参加的国际条约，或者按照互惠原则，我国司法机关和外国司法机关可以相互请求刑事司法协助。

**Article 18 In accordance with the international treaties which the People's Republic of China has concluded or acceded to or on the principle of reciprocity, the judicial authority of China and that of other countries may request judicial assistance from each other in criminal affairs.**

## 第二章 管辖

## Chapter II — Jurisdiction

**第十九条** 刑事案件的侦查由公安机关进行，法律另有规定的除

**Article 19 Investigation in criminal cases shall be conducted by public security organs, except as otherwise provided by law.** Any case regarding false imprisonment, extortion of

外。

人民检察院在对诉讼活动实行法律监督中发现的司法工作人员利用职权实施的非法拘禁、刑讯逼供、非法搜查等侵犯公民权利、损害司法公正的犯罪，可以由人民检察院立案侦查。对于公安机关管辖的国家机关工作人员利用职权实施的重大犯罪案件，需要由人民检察院直接受理的时候，经省级以上人民检察院决定，可以由人民检察院立案侦查。

自诉案件，由人民法院直接受理。

confessions by torture, illegal search or any other crime committed by a judicial officer by taking advantage of his/her functions infringing upon a citizen's rights and damages judicial justice, which is found by a people's procuratorate in its judicial supervision of litigation activities, may be placed on file for investigation by the people's procuratorate. Any other case regarding a serious crime committed by a civil servant under the jurisdiction of the public security authorities by taking advantage of his/her functions, which requires direct acceptance by a people's procuratorate, may be placed on file for investigation by the people's procuratorate upon decision by a people's procuratorate at or above the provincial level.

Cases of private prosecution shall be accepted directly by People's Courts.

**第二十条** 基层人民法院管辖第一审普通刑事案件，但是依照本法由上级人民法院管辖的除外。

**Article 20 A basic-level people's court shall have jurisdiction as a court of first instance over ordinary criminal cases; however, those cases which fall under the jurisdiction of the People's Courts at higher levels as stipulated by this Law shall be exceptions.**

**第二十一条** 中级人民法院管辖下列第一审刑事案件：

（一）危害国家安全、恐怖活动案件；

**Article 21 An intermediate people's court shall have jurisdiction over the following criminal cases as a court of first instance:** (1) a case regarding compromising national security or terrorist activities; and

(2) a case regarding a crime likely punishable by life imprisonment or death penalty."

（二）可能判处无期徒刑、死刑的案件。

**第二十二条** 高级人民法院管辖的第一审刑事案件，是全省（自治区、直辖市）性的重大刑事案件。

**Article 22** A higher people's court shall have the jurisdiction as a court of first instance over major criminal cases that pertain to an entire province (autonomous region or centrally-administered municipality).

**第二十三条** 最高人民法院管辖的第一审刑事案件，是全国性的重大刑事案件。

**Article 23** The Supreme People's Court shall have the jurisdiction as a court of first instance over major criminal cases that pertain to the whole nation.

**第二十四条** 上级人民法院在必要的时候，可以审判下级人民法院管辖的第一审刑事案件；下级人民法院认为案情重大、复杂需要由上级人民法院审判的第一审刑事案件，可以请求移送上一级人民法院审判。

**Article 24** When necessary, a people's court at a higher level may try criminal cases over which a people's court at a lower level have jurisdiction as a court of first instance; Where a people's court at a lower level considers the circumstances of a criminal case in the first instance to be major or complex and to necessitate a trial by a people's court at a higher level, it may request that the case be transferred to the people's court at the next higher level for trial.

**第二十五条** 刑事案件由犯罪地的人民法院管辖。如果由被告人居住地的人民法院审判更为适宜的，可以由被告人居住地的人民法院管辖。

**Article 25** A criminal case shall be under the jurisdiction of the people's court in the place where the crime was committed. Where it is more appropriate for the case to be tried by the people's court in the place where the defendant resides, then that court may have jurisdiction over the case.

**第二十六条** 几个同级人民法

**Article 26** When two or more people's courts at the same level have jurisdiction over a case, it shall be tried by the people's



院都有权管辖的案件，由最初受理的人民法院审判。在必要的时候，可以移送主要犯罪地的人民法院审判。

**court that first accepted it. When necessary the case may be transferred for trial to the people's court in the principal place where the crime was committed.**

**第二十七条** 上级人民法院可以指定下级人民法院审判管辖不明的案件，也可以指定下级人民法院将案件移送其他人民法院审判。

**Article 27 A people's court at a higher level may instruct a people's court at a lower level to try a case over which jurisdiction is unclear and may also instruct a people's court at a lower level to transfer the case to another people's court for trial.**

**第二十八条** 专门人民法院案件的管辖另行规定。

**Article 28 The jurisdiction over cases in special people's courts shall be stipulated separately.**

### 第三章 回避

### Chapter III — Challenge

**第二十九条** 审判人员、检察人员、侦查人员有下列情形之一的，应当自行回避，当事人及其法定代理人也有权要求他们回避：

**Article 29 In any of the following situations, a member of the judicial, procuratorial or investigatory personnel shall voluntarily withdraw, and the parties to the case and their legal representatives shall have the right to request his withdrawal:** (1) If he is a party or a close relative of a party to the case;

（一）是本案的当事人或者是当事人的近亲属的；

(2) If he or a close relative of his has an interest in the case;

（二）本人或者他的近亲属和本案有利害关系的；

(3) If he has served as a witness, expert witness, defender or agent ad litem in the current case; or

（三）担任过本案的证人、鉴定人、辩护人、诉讼代理人的；

(4) If he has any other relations with a party to the case that could affect the impartial handling of the case.



（四）与本案当事人有其他关系，可能影响公正处理案件的。

**第三十条** 审判人员、检察人员、侦查人员不得接受当事人及其委托的人的请客送礼，不得违反规定会见当事人及其委托的人。

审判人员、检察人员、侦查人员违反前款规定的，应当依法追究法律责任。当事人及其法定代理人有权要求他们回避。

**Article 30** Judges, procurators or investigators shall not accept invitations to dinner or presents from the parties to a case or the persons entrusted by the parties and shall not meet with the parties to a case or the persons entrusted by the parties in violation of regulations. Any judge, procurator or investigator who violates the provisions in the preceding paragraph shall be investigated for legal liability. The parties to the case and their legal representatives shall have the right to challenge him/her for his/her withdrawal.

**第三十一条** 审判人员、检察人员、侦查人员的回避，应当分别由院长、检察长、公安机关负责人决定；院长的回避，由本院审判委员会决定；检察长和公安机关负责人的回避，由同级人民检察院检察委员会决定。

对侦查人员的回避作出决定前，侦查人员不能停止对案件的侦查。

对驳回申请回避的决定，当事人及其法定代理人可以申请复议一

**Article 31** The withdrawal of a judge, procurator and investigator shall be determined respectively by the president of the court, the chief procurator, and the head of a public security organ; the withdrawal of the president of the court shall be determined by the court's judicial committee; and the withdrawal of the chief procurator or the head of a public security organ shall be determined by the procuratorial committee of the people's procuratorate at the corresponding level. An investigator may not suspend investigation of a case before a decision is made on his withdrawal.

If a decision has been made to reject his application for withdrawal, the party or his legal representative may apply for reconsideration once.

次。

**第三十二条** 本章关于回避的规定适用于书记员、翻译人员和鉴定人。

辩护人、诉讼代理人可以依照本章的规定要求回避、申请复议。

**Article 32** The challenge provisions of this Chapter shall also apply to court clerks, interpreters, and expert witnesses. Defenders and agents ad litem may request withdrawal and apply for reconsideration according to the provisions of this Chapter.

#### 第四章 辩护与代理

#### Chapter IV Defense and Representation

**第三十三条** 犯罪嫌疑人、被告人除自己行使辩护权以外，还可以委托一至二人作为辩护人。下列的人可以被委托为辩护人：

（一）律师；

（二）人民团体或者犯罪嫌疑人、被告人所在单位推荐的人；

（三）犯罪嫌疑人、被告人的监护人、亲友。

正在被执行刑罚或者依法被剥夺、限制人身自由的人，不得担任辩护人。

被开除公职和被吊销律师、公

**Article 33** In addition to exercising the right to defend himself, a criminal suspect or a defendant may entrust one or two persons as his defenders. The following persons may be entrusted as defenders: (1) Lawyers;

(2) Persons recommended by a public organization or the employer of the criminal suspect or the defendant; and

(3) Guardians or relatives and friends of the criminal suspect or the defendant.

Persons who are under criminal punishment or whose personal freedom is deprived of or restricted according to law shall not serve as defenders.

Whoever has been discharged from public employment or has had his/her practicing certificate for lawyers or notaries revoked shall not serve as a defender, except that he/she is the guardian or close relative of the criminal suspect or the defendant.

证员执业证书的人，不得担任辩护人，但系犯罪嫌疑人、被告人的监护人、近亲属的除外。

**第三十四条** 犯罪嫌疑人自被侦查机关第一次讯问或者采取强制措施之日起，有权委托辩护人；在侦查期间，只能委托律师作为辩护人。被告人有权随时委托辩护人。

侦查机关在第一次讯问犯罪嫌疑人或者对犯罪嫌疑人采取强制措施的时候，应当告知犯罪嫌疑人有权委托辩护人。人民检察院自收到移送审查起诉的案件材料之日起三日以内，应当告知犯罪嫌疑人有权委托辩护人。人民法院自受理案件之日起三日以内，应当告知被告人有权委托辩护人。犯罪嫌疑人、被告人在押期间要求委托辩护人的，人民法院、人民检察院和公安机关应当及时转达其要求。

犯罪嫌疑人、被告人在押的，也可以由其监护人、近亲属代为委托辩护人。

**Article 34** A criminal suspect shall have the right to entrust a defender from the day when the criminal suspect is interrogated by an investigation authority for the first time or from the day when a compulsory measure is taken against the criminal suspect; during the period of investigation, a criminal suspect may only entrust a lawyer as a defender. A defendant shall have the right to entrust a defender at any time. When an investigation authority interrogates a criminal suspect for the first time or takes a compulsory measure against the criminal suspect, it shall inform the criminal suspect of his/her right to entrust a defender. A people's procuratorate shall, within three days after receiving the case file transferred for examination and prosecution, inform a criminal suspect of his/her right to entrust a defender. A people's court shall, within three days after accepting a case, inform a defendant of his/her right to entrust a defender. If a criminal suspect or defendant in custody files a request for entrusting a defender, the people's court, people's procuratorate, and public security organ shall convey such a request in a timely manner.

For a criminal suspect or defendant in custody, his/her guardian or close relative may entrust a defender on his/her behalf.

After accepting entrustment of a criminal suspect or defendant, a defender shall inform the authority handling the case in a timely manner.

辩护人接受犯罪嫌疑人、被告人委托后，应当及时告知办理案件的机关。

**第三十五条** 犯罪嫌疑人、被告人因经济困难或者其他原因没有委托辩护人的，本人及其近亲属可以向法律援助机构提出申请。对符合法律援助条件的，法律援助机构应当指派律师为其提供辩护。

犯罪嫌疑人、被告人是盲、聋、哑人，或者是尚未完全丧失辨认或者控制自己行为能力的精神病人，没有委托辩护人的，人民法院、人民检察院和公安机关应当通知法律援助机构指派律师为其提供辩护。

犯罪嫌疑人、被告人可能被判处无期徒刑、死刑，没有委托辩护人的，人民法院、人民检察院和公安机关应当通知法律援助机构指派律师为其提供辩护。

**第三十六条** 法律援助机构可以在人民法院、看守所等场所派驻

**Article 35** Where a criminal suspect or defendant has not entrusted a defender for financial hardship or other reasons, the criminal suspect or his/her close relative may file an application with a legal aid agency. If the legal aid conditions are met, the legal aid agency shall designate a lawyer to defend him/her. Where a criminal suspect or defendant is blind, deaf or mute, or is a mental patient who has not completely lost the ability to recognize or control his/her behavior, if he/she has not entrusted a defender, the people's court, people's procuratorate, and public security organ shall notify a legal aid agency to designate a lawyer to defend him/her.

Where a criminal suspect or defendant who may be sentenced to life imprisonment or death penalty has not entrusted a defender, the people's court, people's procuratorate, and public security organ shall notify a legal aid agency to designate a lawyer to defend him/her.

**Article 36** A legal aid agency may have duty lawyers stationed in such venues as people's courts or detention houses. For criminal suspects or defendants who do not entrust defender,

值班律师。犯罪嫌疑人、被告人没有委托辩护人，法律援助机构没有指派律师为其提供辩护的，由值班律师为犯罪嫌疑人、被告人提供法律咨询、程序选择建议、申请变更强制措施、对案件处理提出意见等法律帮助。

人民法院、人民检察院、看守所应当告知犯罪嫌疑人、被告人有权约见值班律师，并为犯罪嫌疑人、被告人约见值班律师提供便利。

**第三十七条** 辩护人的责任是根据事实和法律，提出犯罪嫌疑人、被告人无罪、罪轻或者减轻、免除其刑事责任的材料和意见，维护犯罪嫌疑人、被告人的诉讼权利和其他合法权益。

**第三十八条** 辩护律师在侦查期间可以为犯罪嫌疑人提供法律帮助；代理申诉、控告；申请变更强制措施；向侦查机关了解犯罪嫌疑人涉嫌的罪名和案件有关情况，提

**nor legal aid agencies designate lawyers to defend them, such duty lawyers shall provide criminal suspects or defendants with such legal assistance as legal advice, suggestions on procedural selection, application for modification of coercive measures, and offering opinions on case handling, etc. Any people's court, people's procuratorate or detention house shall inform a criminal suspect or defendant of his/her right to meet with a duty lawyer and facilitate such appointment.**

**Article 37** The responsibilities of a defender are to present materials and opinions proving the innocence of a criminal suspect or defendant, pettiness of a crime, or mitigation of or exemption from criminal liability and protect the procedural rights and other lawful rights and interests of a criminal suspect or defendant, in accordance with facts and law.

**Article 38** During the period of investigation, a defense lawyer may provide legal assistance for a criminal suspect, file petitions and accusations on behalf of the criminal suspect, apply for modifying a compulsory measure, learn the charges against the criminal suspect and relevant case information from the investigation authority, and offer opinions.

出意见。

**第三十九条** 辩护律师可以同在押的犯罪嫌疑人、被告人会见和通信。其他辩护人经人民法院、人民检察院许可，也可以同在押的犯罪嫌疑人、被告人会见和通信。

辩护律师持律师执业证书、律师事务所证明和委托书或者法律援助公函要求会见在押的犯罪嫌疑人、被告人的，看守所应当及时安排会见，至迟不得超过四十八小时。

危害国家安全犯罪、恐怖活动犯罪案件，在侦查期间辩护律师会见在押的犯罪嫌疑人，应当经侦查机关许可。上述案件，侦查机关应当事先通知看守所。

辩护律师会见在押的犯罪嫌疑人、被告人，可以了解案件有关情况，提供法律咨询等；自案件移送审查起诉之日起，可以向犯罪嫌疑人、被告人核实有关证据。辩护律师会见犯罪嫌疑人、被告人时不被

**Article 39** A defense lawyer may meet and communicate with a criminal suspect or defendant in custody. As permitted by a people's court or people's procuratorate, a defender other than a defense lawyer may also meet and communicate with a criminal suspect or defendant in custody. When a defense lawyer files a request for a meeting with a criminal suspect or defendant in custody against the lawyer's practicing certificate, a proof issued by the law firm, and a power of attorney or an official legal aid document, a jail shall arrange a meeting in a timely manner, no later than 48 hours after the request is filed.

During the investigation period for crimes endangering State security or involving terrorist activities, defense lawyers shall obtain the approval by the investigating authorities before they meet with the criminal suspects. In the aforesaid cases, the investigating authorities shall notify the detention houses of information relating to the aforesaid meeting in advance.

At a meeting with a criminal suspect or defendant in custody, a defense lawyer may learn relevant case information and provide legal advice and other services, and from the day when the case is transferred for examination and prosecution, may verify relevant evidence with the criminal suspect or defendant. A meeting between a defense lawyer and a criminal suspect or defendant shall not be monitored.

Where a defense lawyer meets or communicates with a criminal suspect or defendant under residential confinement, paragraphs 1, 3 and 4 hereof shall apply.

监听。

辩护律师同被监视居住的犯罪嫌疑人、被告人会见、通信，适用第一款、第三款、第四款的规定。

**第四十条** 辩护律师自人民检察院对案件审查起诉之日起，可以查阅、摘抄、复制本案的案卷材料。其他辩护人经人民法院、人民检察院许可，也可以查阅、摘抄、复制上述材料。

**Article 40** A defense lawyer may, from the day when the people's procuratorate examines a case for prosecution, consult, extract, and duplicate case materials. As permitted by the people's court or people's procuratorate, a defender other than a defense lawyer may also consult, extract, and duplicate such materials.

**第四十一条** 辩护人认为在侦查、审查起诉期间公安机关、人民检察院收集的证明犯罪嫌疑人、被告人无罪或者罪轻的证据材料未提交的，有权申请人民检察院、人民法院调取。

**Article 41** Where a defender believes that any evidence collected by the public security organ or people's procuratorate during the period of investigation or examination and prosecution regarding the innocence of a criminal suspect or defendant or the pettiness of crime has not been submitted, the defender shall have the right to apply to the people's procuratorate or people's court for submission of such evidence.

**第四十二条** 辩护人收集的有关犯罪嫌疑人不在犯罪现场、未达到刑事责任年龄、属于依法不负刑事责任的精神病人的证据，应当及时告知公安机关、人民检察院。

**Article 42** A defender shall inform the public security organ or people's procuratorate in a timely manner of evidence collected regarding a criminal suspect's alibi or the fact that the criminal suspect has not reached the age for criminal liability or is a mental patient legally exempted from criminal liability.

**第四十三条** 辩护律师经证人

**Article 43** Defence lawyers may, with the consent of witnesses or other entities and individuals concerned, collect



或者其他有关单位和个人同意，可以向他们收集与本案有关的材料，也可以申请人民检察院、人民法院收集、调取证据，或者申请人民法院通知证人出庭作证。

辩护律师经人民检察院或者人民法院许可，并且经被害人或者其近亲属、被害人提供的证人同意，可以向他们收集与本案有关的材料。

**information pertaining to the current case from them and they may also apply to the people's procuratorate or the people's court for the collection and obtaining of evidence, or request the people's court to inform the witnesses to appear before court and give a testimony.** With permission of the people's procuratorate or the people's court and with the consent of the victim, his close relatives or the witnesses provided by the victim, defence lawyers may collect information pertaining to the current case from them.

**第四十四条** 辩护人或者其他任何人，不得帮助犯罪嫌疑人、被告人隐匿、毁灭、伪造证据或者串供，不得威胁、引诱证人作伪证以及进行其他干扰司法机关诉讼活动的行为。

违反前款规定的，应当依法追究法律责任，辩护人涉嫌犯罪的，应当由办理辩护人所承办案件的侦查机关以外的侦查机关办理。辩护人是律师的，应当及时通知其所在的律师事务所或者所属的律师协会。

**Article 44** No defender or other person may help a criminal suspect or defendant conceal, destroy, or forge evidence or make a false confession in collusion, intimidate or induce a witness into committing perjury, or otherwise interfere with the procedures of judicial authorities. Whoever violates the preceding paragraph shall be subject to legal liability, and a defender suspected of a crime shall be handled by an investigation authority other than the one handling the case in which the defender provides representation. If the defender is a lawyer, the law firm employing the lawyer or the bar association to which the lawyer belongs shall be informed in a timely manner.



**第四十五条** 在审判过程中，

被告人可以拒绝辩护人继续为他辩护，也可以另行委托辩护人辩护。

**Article 45** During a trial, the defendant may refuse to have his defender continue to defend him and may entrust his defence to another defender.

**第四十六条** 公诉案件的被害

人及其法定代理人或者近亲属，附带民事诉讼的当事人及其法定代理人，自案件移送审查起诉之日起，有权委托诉讼代理人。自诉案件的自诉人及其法定代理人，附带民事诉讼的当事人及其法定代理人，有权随时委托诉讼代理人。

**Article 46** A victim in a case of public prosecution, his legal representatives or close relatives, and a party to an incidental civil action and his legal representatives shall, from the date on which the case is transferred for examination before prosecution, have the right to entrust agents ad litem. A private prosecutor in a case of private prosecution and his legal representatives, and a party to an incidental civil action and his legal representatives shall have the right to entrust agents ad litem at any time. A people's procuratorate shall, within three days from the date of receiving the file record of a case transferred for examination before prosecution, notify the victim and his legal representatives or close relatives and the party to an incidental civil action and his legal representatives that they have the right to entrust agents ad litem. A people's court shall, within three days from the date of accepting a case of private prosecution, notify the private prosecutor and his legal representatives and the party to an incidental civil action and his legal representatives that they have the right to entrust agents ad litem.

人民检察院自收到移送审查起诉的案件材料之日起三日以内，应当告知被害人及其法定代理人或者其近亲属、附带民事诉讼的当事人及其法定代理人有权委托诉讼代理人。人民法院自受理自诉案件之日起三日以内，应当告知自诉人及其法定代理人、附带民事诉讼的当事人及其法定代理人有权委托诉讼代理人。

**第四十七条** 委托诉讼代理人

人，参照本法第三十三条的规定执

**Article 47** With regard to the entrusting of an agent ad litem, the provisions of Article 33 of this Law shall be applied mutatis mutandis.

行。

**第四十八条** 辩护律师对在执业活动中知悉的委托人的有关情况和信息，有权予以保密。但是，辩护律师在执业活动中知悉委托人或者其他人，准备或者正在实施危害国家安全、公共安全以及严重危害他人人身安全的犯罪的，应当及时告知司法机关。

**Article 48** A defense lawyer shall have the right to keep confidential the conditions and information regarding a client known in the practice of law. However, if knowing in the practice of law that a client or any other person is preparing for or is committing a crime compromising national security, public security or seriously damaging the personal safety of others, a defense lawyer shall inform a judicial authority in a timely manner.

**第四十九条** 辩护人、诉讼代理人认为公安机关、人民检察院、人民法院及其工作人员阻碍其依法行使诉讼权利的，有权向同级或者上一级人民检察院申诉或者控告。人民检察院对申诉或者控告应当及时进行审查，情况属实的，通知有关机关予以纠正。

**Article 49** A defender or agent ad litem who believes that a public security organ, a people's procuratorate, a people's court or any staff member thereof has impeded his/her exercise of procedural rights, shall have the right to file a petition or accusation with the people's procuratorate at the same level or at the next higher level. The people's procuratorate shall examine the petition or accusation in a timely manner and, if it is true, notify the authority involved to make correction."

## 第五章 证据

## Chapter V Evidence

**第五十条** 可以用于证明案件事实的材料，都是证据。

证据包括：

**Article 50** All materials that may be used to prove the facts of a case are evidence. Evidence includes:

- (1) physical evidence;
- (2) documentary evidence;

（一）物证；	(3) witness statement;
（二）书证；	(4) victim statement;
（三）证人证言；	(5) confession and defense of a criminal suspect or defendant;
（四）被害人陈述；	(6) expert opinion;
（五）犯罪嫌疑人、被告人供述和辩解；	(7) transcripts of crime scene investigation, examination, identification, and investigative reenactment; and
（六）鉴定意见；	(8) audio-visual recordings and electronic data.
（七）勘验、检查、辨认、侦查实验等笔录；	Evidence must be verified before being used as a basis for deciding a case.
（八）视听资料、电子数据。	
证据必须经过查证属实，才能作为定案的根据。	

**第五十一条** 公诉案件中被告人有罪的举证责任由人民检察院承担，自诉案件中被告人有罪的举证责任由自诉人承担。

**Article 51** The burden of proof of guilty of the defendant in a public prosecution case shall fall on the people's procuratorate, while that in a private prosecution case shall fall on the private prosecutor.

**第五十二条** 审判人员、检察人员、侦查人员必须依照法定程序，收集能够证实犯罪嫌疑人、被告人有罪或者无罪、犯罪情节轻重

**Article 52** Judges, prosecutors, and investigators must, under legal procedures, collect various kinds of evidence that can prove the guilt or innocence of a criminal suspect or defendant and the gravity of a crime. It shall be strictly prohibited to extort confessions by torture, collect evidence by threat, enticement, deceit, or other illegal means, or force

的各种证据。严禁刑讯逼供和以威胁、引诱、欺骗以及其他非法方法收集证据，不得强迫任何人证实自己有罪。必须保证一切与案件有关或者了解案情的公民，有客观地充分地提供证据的条件，除特殊情况外，可以吸收他们协助调查。

**anyone to commit self-incrimination. It must be ensured that all citizens who are involved in a case or have information regarding a case can objectively and fully provide evidence, and, except under special circumstances, such citizens may be required to assist investigation.**

**第五十三条** 公安机关提请批准逮捕书、人民检察院起诉书、人民法院判决书，必须忠实于事实真相。故意隐瞒事实真相的，应当追究责任。

**Article 53 A public security organ's requests for approval of arrest, a people's procuratorate's bills of prosecution and a people's court's written judgments must be faithful to the facts. The responsibility of anyone who intentionally conceals the facts shall be investigated.**

**第五十四条** 人民法院、人民检察院和公安机关有权向有关单位和个人收集、调取证据。有关单位和个人应当如实提供证据。

**Article 54 People's courts, people's procuratorates and public security organs shall have the authority to collect or obtain evidence from the entities and individuals concerned. The entities and individuals concerned shall provide truthful evidence.** Physical evidence, documentary evidence, audio-visual recordings, electronic data, and other evidence collected by an administrative authority in the process of administrative enforcement of law and case investigation may be used as evidence in criminal proceedings.

行政机关在行政执法和查办案件过程中收集的物证、书证、视听资料、电子数据等证据材料，在刑事诉讼中可以作为证据使用。

Evidence involving any state secret, trade secret, or personal privacy shall be kept confidential.

对涉及国家秘密、商业秘密、个人隐私的证据，应当保密。

Anyone that falsifies, conceals or destroys evidence, regardless of which side of a case he belongs to, must be investigated under law.

凡是伪造证据、隐匿证据或者毁灭证据的，无论属于何方，必须受法律追究。

**第五十五条** 对一切案件的判处都要重证据，重调查研究，不轻信口供。只有被告人供述，没有其他证据的，不能认定被告人有罪和处以刑罚；没有被告人供述，证据确实、充分的，可以认定被告人有罪和处以刑罚。

证据确实、充分，应当符合以下条件：

（一）定罪量刑的事实都有证据证明；

（二）据以定案的证据均经法定程序查证属实；

（三）综合全案证据，对所认定事实已排除合理怀疑。

**第五十六条** 采用刑讯逼供等非法方法收集的犯罪嫌疑人、被告人供述和采用暴力、威胁等非法方法收集的证人证言、被害人陈述，

**Article 55** In deciding each case, a people's court shall focus on evidence, investigation, and research, and credence shall not be readily given to oral confessions. A defendant shall not be criminated and sentenced to a criminal punishment merely based on the defendant's confession without other evidence; a defendant may be criminated and sentenced to a criminal punishment based on hard and sufficient evidence even without his/her confession. Evidence is hard and sufficient when the following conditions are met:

(1) All facts for conviction and sentencing are supported by evidence;

(2) All evidence used to decide a case has been verified under legal procedures; and

(3) All facts found are beyond reasonable doubt based on all evidence of the case.

**Article 56** A confession of a criminal suspect or defendant extorted by torture or obtained by other illegal means and a witness or victim statement obtained by violence, threat, or other illegal means shall be excluded. If any physical or documentary evidence is not collected under the statutory procedure, which may seriously affect justice,

应当予以排除。收集物证、书证不符合法定程序，可能严重影响司法公正的，应当予以补正或者作出合理解释；不能补正或者作出合理解释的，对该证据应当予以排除。

在侦查、审查起诉、审判时发现有应当排除的证据的，应当依法予以排除，不得作为起诉意见、起诉决定和判决的依据。

**第五十七条** 人民检察院接到报案、控告、举报或者发现侦查人员以非法方法收集证据的，应当进行调查核实。对于确有以非法方法收集证据情形的，应当提出纠正意见；构成犯罪的，依法追究刑事责任。

**第五十八条** 法庭审理过程中，审判人员认为可能存在本法第五十六条规定的以非法方法收集证据情形的，应当对证据收集的合法性进行法庭调查。

当事人及其辩护人、诉讼代理人有权申请人民法院对以非法方法

**supplementation and correction or justification shall be provided; otherwise, such evidence shall be excluded.** If it is discovered during the investigation, examination before prosecution, or trial of a case that any evidence shall be excluded, such evidence shall be excluded by law and not be used as a basis for a prosecution proposal, a prosecution decision, and a sentence.

**Article 57** After receiving a report, accusation, or tip on any illegal collection of evidence by investigators or after discovering any illegal collection of evidence by investigators, a people's procuratorate shall conduct investigation and verification. If it is confirmed that evidence has been illegally collected, the people's procuratorate shall provide an opinion on correction; if any crime is committed, criminal liability shall be investigated in accordance with law.

**Article 58** Where, in a court session, a judge believes that there may be any illegal collection of evidence as prescribed in Article 56 of this Law, the judge shall conduct an investigation in court regarding the legality of collection of evidence. A party concerned and the defender or agent ad litem thereof shall have the right to apply to a people's court for excluding illegally collected evidence. Relevant clues or materials shall be provided for an application for excluding illegally collected evidence.

收集的证据依法予以排除。申请排除以非法方法收集的证据的，应当提供相关线索或者材料。

**第五十九条** 在对证据收集的合法性进行法庭调查的过程中，人民检察院应当对证据收集的合法性加以证明。

现有证据材料不能证明证据收集的合法性的，人民检察院可以提请人民法院通知有关侦查人员或者其他人员出庭说明情况；人民法院可以通知有关侦查人员或者其他人员出庭说明情况。有关侦查人员或者其他人员也可以要求出庭说明情况。经人民法院通知，有关人员应当出庭。

**第六十条** 对于经过法庭审理，确认或者不能排除存在本法第五十六条规定的以非法方法收集证据情形的，对有关证据应当予以排除。

**第六十一条** 证人证言必须在法庭上经过公诉人、被害人和被告

**Article 59 During the investigation in court regarding the legality of collection of evidence, a people's procuratorate shall prove the legality of collection of evidence.** If the existing evidentiary materials cannot prove the legality of collection of evidence, the people's procuratorate may request the people's court to notify relevant investigators or other persons to appear before court to explain; and the people's court may notify relevant investigators or other persons to appear before court to explain. The relevant investigators or other persons may also file a request for appearing before court to explain. The relevant persons notified by the people's court shall appear before court.

**Article 60 Where, at trial, any illegal collection of evidence as prescribed in Article 56 of this Law is confirmed or cannot be ruled out, the relevant evidence shall be excluded.**

**Article 61 A witness statement may be used as a basis for deciding a case only after it has been cross-examined in court by both sides, the public prosecutor and victim as one side**



人、辩护人双方质证并且查实以后，才能作为定案的根据。法庭查明证人有意作伪证或者隐匿罪证的时候，应当依法处理。

**and the defendant and defender as the other side, and verified. If a court discovers that a witness has intentionally committed perjury or concealed criminal evidence, the witness shall be handled in accordance with law.**

**第六十二条** 凡是知道案件情况的人，都有作证的义务。

生理上、精神上有缺陷或者年幼，不能辨别是非、不能正确表达的人，不能作证人。

**Article 62 All those who have information about a case shall have the obligation to testify.** Physically or mentally handicapped persons or minors who cannot distinguish right from wrong or cannot properly express themselves shall not be qualified as witnesses.

**第六十三条** 人民法院、人民检察院和公安机关应当保障证人及其近亲属的安全。

对证人及其近亲属进行威胁、侮辱、殴打或者打击报复，构成犯罪的，依法追究刑事责任；尚不够刑事处罚的，依法给予治安管理处罚。

**Article 63 People's courts, people's procuratorates and public security organs shall insure the safety of witnesses and their close relatives.** Anyone who intimidates, humiliates, beats or retaliates against a witness or his close relatives, if his act constitutes a crime, shall be investigated for criminal liability according to law; if the case is not serious enough for criminal punishment, he shall be punished for violation of public security in accordance with law.

**第六十四条** 对于危害国家安全犯罪、恐怖活动犯罪、黑社会性质的组织犯罪、毒品犯罪等案件，证人、鉴定人、被害人因在诉讼中作证，本人或者其近亲属的人身安

**Article 64 Where a witness, identification or evaluation expert, or victim testifies in a crime of compromising national security, a crime of terrorist activities, an organized crime of a gangland nature, or a drug crime, endangering the personal safety of the witness, identification or evaluation expert, or victim or his/her close relatives, the people's court, people's procuratorate, and public security organ shall take one or more of the following protective measures: (1) not disclosing**



全面面临危险的，人民法院、人民检察院和公安机关应当采取以下一项或者多项保护措施：

（一）不公开真实姓名、住址和工作单位等个人信息；

（二）采取不暴露外貌、真实声音等出庭作证措施；

（三）禁止特定的人员接触证人、鉴定人、被害人及其近亲属；

（四）对人身和住宅采取专门性保护措施；

（五）其他必要的保护措施。

证人、鉴定人、被害人认为因在诉讼中作证，本人或者其近亲属的人身安全面临危险的，可以向人民法院、人民检察院、公安机关请求予以保护。

人民法院、人民检察院、公安机关依法采取保护措施，有关单位和个人应当配合。

his/her true personal information, such as name, residence address, and employer;

(2) not exposing his/her look, true voice, and so on, when he/she takes the stand;

(3) prohibiting particular persons from contacting the witness, identification or evaluation expert, or victim and his/her close relatives;

(4) providing special protection for him/her and his/her residence; and

(5) other necessary protective measures.

Where a witness, identification or evaluation expert, or victim believes that his/her personal safety or that of his/her close relatives is endangered by his/her testimony in proceedings, he/she may request protection from the people's court, people's procuratorate, and public security organ.

The relevant entities and individuals shall cooperate with a people's court, people's procuratorate, or public security organ in taking protective measures in accordance with law.

**第六十五条** 证人因履行作证义务而支出的交通、住宿、就餐等费用，应当给予补助。证人作证的补助列入司法机关业务经费，由同级政府财政予以保障。

**Article 65** Subsidization shall be provided for the travel, board and lodging, and other expenses of a witness for performing the obligation to testify. Such subsidization shall be recorded under the operating expenditures of judicial authorities and ensured by the treasury of the government at the same level. When a working witness testifies, his/her employer may not directly or indirectly deduct his/her salary, bonus, and other benefits.

有工作单位的证人作证，所在单位不得克扣或者变相克扣其工资、奖金及其他福利待遇。

## 第六章 强制措施

## Chapter VI Compulsory Measures

**第六十六条** 人民法院、人民检察院和公安机关根据案件情况，对犯罪嫌疑人、被告人可以拘传、取保候审或者监视居住。

**Article 66** People's Courts, people's procuratorates and public security organs may, according to the circumstances of a case, issue a warrant to compel the appearance of the criminal suspect or defendant, have him released upon bail pending trial or subject him to residential surveillance.

**第六十七条** 人民法院、人民检察院和公安机关对有下列情形之一的犯罪嫌疑人、被告人，可以取保候审：

（一）可能判处管制、拘役或者独立适用附加刑的；

（二）可能判处有期徒刑以上刑罚，采取取保候审不致发生社会

**Article 67** A people's court, a people's procuratorate, and a public security organ may grant a release upon bail pending trial to a criminal suspect or defendant pending trial under any of the following circumstances: (1) the criminal suspect or defendant may be sentenced to supervision without incarceration, limited incarceration, or an accessory penalty only;

(2) the criminal suspect or defendant may be sentenced to a fixed-term imprisonment or a heavier penalty but will not cause danger to the public if granted bail;

(3) the criminal suspect or defendant suffers a serious illness and cannot live by himself or herself or is a pregnant woman or a woman who is breastfeeding her own baby and will not cause

危险性的；

（三）患有严重疾病、生活不能自理，怀孕或者正在哺乳自己婴儿的妇女，采取取保候审不致发生社会危险性的；

（四）羁押期限届满，案件尚未办结，需要采取取保候审的。

取保候审由公安机关执行。

danger to the public if granted bail; or

(4) The term of custody of the criminal suspect or defendant has expired but the case has not been closed, and a bail is necessary.

Release upon bail pending trial shall be executed by a public security organ.

**第六十八条** 人民法院、人民检察院和公安机关决定对犯罪嫌疑人、被告人取保候审，应当责令犯罪嫌疑人、被告人提出保证人或者交纳保证金。

**Article 68** Where a people's court, a people's procuratorate or a public security organ decides to allow a criminal suspect or defendant to be released upon bail pending trial, it shall order the criminal suspect or defendant to provide a guarantor or pay guaranty.

**第六十九条** 保证人必须符合下列条件：

- （一）与本案无牵连；
- （二）有能力履行保证义务；
- （三）享有政治权利，人身自由未受到限制；
- （四）有固定的住处和收入。

**Article 69** A guarantor must be a person who meets the following conditions: (1) To be not involved in the current case;

(2) To be able to perform a guarantor's duties;

(3) To be entitled to political rights and not subjected to restriction of personal freedom; and

(4) To have a fixed domicile and steady income.

**第七十条** 保证人应当履行以下义务：

（一）监督被保证人遵守本法第七十一条的规定；

（二）发现被保证人可能发生或者已经发生违反本法第七十一条规定的行为的，应当及时向执行机关报告。

被保证人有违反本法第七十一条规定的行为，保证人未履行保证义务的，对保证人处以罚款，构成犯罪的，依法追究刑事责任。

**Article 70 A guarantor shall perform the following**

**obligations:** (1) supervise the bailed person in complying with the provisions of Article 71 of this Law; and

(2) after discovering that the bailed person may commit or has committed a violation of Article 71 of this Law, report it to the execution authority in a timely manner.

Where the bailed person has committed a violation of Article 71 of this Law and the guarantor fails to perform guaranty obligations, the guarantor shall be fined, and if any crime is committed, criminal liability shall be investigated in accordance with law.

**第七十一条** 被取保候审的犯罪嫌疑人、被告人应当遵守以下规定：

（一）未经执行机关批准不得离开所居住的市、县；

（二）住址、工作单位和联系方式发生变动的，在二十四小时以内向执行机关报告；

（三）在传讯的时候及时到

**Article 71 A bailed criminal suspect or defendant shall comply with the following provisions:**

(1) not leaving the city or county where he/she resides without the approval of the execution authority;

(2) reporting any change of his/her residence address, employer, or contact information to the execution authority within 24 hours of such change;

(3) appearing before court in a timely manner when summoned;

(4) not interfering in any way with the testimony of witnesses; and

(5) not destroying or falsifying evidence or making a false confession in collusion.

Based on the circumstances of a case, a people's court, a people's

案；

（四）不得以任何形式干扰证

人作证；

（五）不得毁灭、伪造证据或

者串供。

人民法院、人民检察院和公安机关可以根据案件情况，责令被取保候审的犯罪嫌疑人、被告人遵守以下一项或者多项规定：

（一）不得进入特定的场所；

（二）不得与特定的人员会见

或者通信；

（三）不得从事特定的活动；

（四）将护照等出入境证件、

驾驶证件交执行机关保存。

被取保候审的犯罪嫌疑人、被告人违反前两款规定，已交纳保证金的，没收部分或者全部保证金，并且区别情形，责令犯罪嫌疑人、被告人具结悔过，重新交纳保证

procuratorate, and a public security organ may order a bailed criminal suspect or defendant to comply with one or more of the following provisions:

(1) not entering particular places;

(2) not meeting or communicate with particular persons;

(3) not engaging in particular activities; and

(4) delivering his/her passport and other international travel credentials and driver's license to the execution authority for preservation.

Where a bailed criminal suspect or defendant violates any provision of the preceding two paragraphs, if a guaranty has been paid, part or all of the guaranty shall be forfeited, and, based on the actual circumstances, the criminal suspect or defendant shall be ordered to make a statement of repentance, pay a guaranty or provide a guarantor again, or be placed under residential surveillance or arrested.

Where any violation of the bail provisions entails an arrest, the criminal suspect or defendant may be detained first.

金、提出保证人，或者监视居住、予以逮捕。

对违反取保候审规定，需要予以逮捕的，可以对犯罪嫌疑人、被告人先行拘留。

**第七十二条** 取保候审的决定机关应当综合考虑保证诉讼活动正常进行的需要，被取保候审人的社会危险性，案件的性质、情节，可能判处刑罚的轻重，被取保候审人的经济状况等情况，确定保证金的数额。

提供保证金的人应当将保证金存入执行机关指定银行的专门账户。

**第七十三条** 犯罪嫌疑人、被告人在取保候审期间未违反本法第七十一条规定的，取保候审结束的时候，凭解除取保候审的通知或者有关法律文书到银行领取退还的保证金。

**第七十四条** 人民法院、人民

**Article 72** The authority deciding on a release upon bail pending trial shall decide the amount of a guaranty after fully considering the need to ensure normal legal proceedings, the danger of the person to be released upon bail pending trial, the nature and circumstances of the case, the gravity of the possible punishment, the financial condition of the person to be released upon bail pending trial, and other factors. The person providing a guaranty shall deposit the guaranty into a special account at a bank designated by the execution authority.

**Article 73** Where a criminal suspect or defendant has not violated the provisions of Article 71 of this Law during the period of waiting for trial on bail, he/she may receive a refund of the bail at the bank against a notice of termination of waiting for trial on bail or relevant legal instrument, at the end of the period of waiting for trial on bail.

**Article 74** Under any of the following circumstances, a people's court, a people's procuratorate, and a public security

检察院和公安机关对符合逮捕条件，有下列情形之一的犯罪嫌疑人、被告人，可以监视居住：

（一）患有严重疾病、生活不能自理的；

（二）怀孕或者正在哺乳自己婴儿的妇女；

（三）系生活不能自理的人的唯一扶养人；

（四）因为案件的特殊情况或者办理案件的需要，采取监视居住措施更为适宜的；

（五）羁押期限届满，案件尚未办结，需要采取监视居住措施的。

对符合取保候审条件，但犯罪嫌疑人、被告人不能提出保证人，也不交纳保证金的，可以监视居住。

监视居住由公安机关执行。

**organ may place a criminal suspect or defendant who meets the arrest conditions under residential surveillance:** (1) the criminal suspect or defendant suffers a serious illness and cannot live by himself/ herself;

(2) the criminal suspect or defendant is a pregnant woman or a woman who is breastfeeding her own baby;

(3) the criminal suspect or defendant is the sole supporter of a person who cannot live by himself/herself;

(4) considering the special circumstances of the case or as needed for handling the case, residential confinement is more appropriate; or

(5) the term of custody has expired but the case has not been closed, and residential confinement is necessary.

Where a criminal suspect or defendant meets the conditions for bail but is neither able to provide a guarantor nor pay a guaranty, he/she may be placed under residential surveillance.

Residential surveillance shall be executed by a public security organ.

**第七十五条** 监视居住应当在

犯罪嫌疑人、被告人的住处执行；无固定住处的，可以在指定的居所执行。对于涉嫌危害国家安全犯罪、恐怖活动犯罪，在住处执行可能有碍侦查的，经上一级公安机关批准，也可以在指定的居所执行。但是，不得在羁押场所、专门的办案场所执行。

指定居所监视居住的，除无法通知的以外，应当在执行监视居住后二十四小时以内，通知被监视居住人的家属。

被监视居住的犯罪嫌疑人、被告人委托辩护人，适用本法第三十四条的规定。

人民检察院对指定居所监视居住的决定和执行是否合法实行监督。

**第七十六条** 指定居所监视居

住的期限应当折抵刑期。被判处管制的，监视居住一日折抵刑期一日；被判处拘役、有期徒刑的，监

**Article 75 Residential surveillance shall be enforced at the domicile of the criminal suspect or the defendant, or at a designated place if he has no permanent domicile. For a crime suspected of endangering national security or involving terrorist activities, if residential surveillance at the domicile of the criminal suspect or the defendant may impede the investigation, residential surveillance may be enforced at a designated place upon approval by the public security authorities at the next higher level. However, residential surveillance shall not be enforced in the place of detention or a special venue for case investigation.** If residential surveillance is executed at a designated residence, the family of the person under residential confinement shall be notified within 24 hours after residential confinement is executed, unless such notification is impossible.

Where a criminal suspect or defendant under residential surveillance entrusts a defender, the provisions of Article 34 of this Law shall apply.

People's procuratorates shall oversee the legality of a decision on and execution of residential confinement at a designated residence.

**Article 76 The term of residential surveillance at a designated residence shall decrease the term of imprisonment. For a sentence of supervision without incarceration, one day of residential surveillance equals one day of the term of imprisonment; for a sentence of limited incarceration or fixed-term imprisonment, two days of residential surveillance**



视居住二日折抵刑期一日。

**equals one day of the term of imprisonment.**

**第七十七条** 被监视居住的犯罪嫌疑人、被告人应当遵守以下规定：

（一）未经执行机关批准不得离开执行监视居住的处所；

（二）未经执行机关批准不得会见他人或者通信；

（三）在传讯的时候及时到案；

（四）不得以任何形式干扰证人作证；

（五）不得毁灭、伪造证据或者串供；

（六）将护照等出入境证件、身份证件、驾驶证件交执行机关保存。

被监视居住的犯罪嫌疑人、被告人违反前款规定，情节严重的，可以予以逮捕；需要予以逮捕的，

**Article 77 A criminal suspect or defendant under residential surveillance shall comply with the following provisions:** (1) not leaving the residence where residential surveillance is executed without the approval of the execution authority;

(2) not meeting or communicating with others without the approval of the execution authority;

(3) appearing before court in a timely manner when summoned;

(4) not interfering in any way with the testimony of witnesses;

(5) not destroying or forging evidence or making a false confession in collusion; and

(6) delivering his/her passport and other international travel credentials, identity document, and driver's license to the execution authority for preservation.

A criminal suspect or defendant under residential surveillance who seriously violates any provision of the preceding paragraph may be arrested; and if arrest is necessary in a case of gross violation, the criminal suspect or defendant may be detained first.

可以对犯罪嫌疑人、被告人先行拘留。

**第七十八条** 执行机关对被监视居住的犯罪嫌疑人、被告人，可以采取电子监控、不定期检查等监视方法对其遵守监视居住规定的情况进行监督；在侦查期间，可以对被监视居住的犯罪嫌疑人的通信进行监控。

**第七十九条** 人民法院、人民检察院和公安机关对犯罪嫌疑人、被告人取保候审最长不得超过十二个月，监视居住最长不得超过六个月。

在取保候审、监视居住期间，不得中断对案件的侦查、起诉和审理。对于发现不应当追究刑事责任或者取保候审、监视居住期限届满的，应当及时解除取保候审、监视居住。解除取保候审、监视居住，应当及时通知被取保候审、监视居住人和有关单位。

**Article 78 Execution authorities may oversee criminal suspects or defendants under residential surveillance regarding their compliance with residential confinement provisions by electronic monitoring, random inspection, and other surveillance means; and during the period of investigation, may monitor the communications of criminal suspects under residential surveillance.**

**Article 79 The period granted by a people's court, people's procuratorate or public security organ to a criminal suspect or defendant for being released upon bail pending trial shall not exceed 12 months; the period for residential surveillance shall not exceed six months.** During the period when the criminal suspect or defendant is released upon bail pending trial or when he is under residential surveillance, investigation, prosecution and handling of the case shall not be suspended. If it is discovered that the criminal suspect or the defendant should not be investigated for criminal responsibility or when the period for being released upon bail pending trial or the period of residential confinement has expired, such period shall be terminated without delay. The person who has obtained a guarantor pending trial or who is under residential surveillance and the entities concerned shall be notified of the termination immediately.

**第八十条** 逮捕犯罪嫌疑人、

**Article 80 Arrests of criminal suspects or defendants shall be**

被告人，必须经过人民检察院批准或者人民法院决定，由公安机关执行。

**subject to approval by a people's procuratorate or decision by a people's court and shall be executed by a public security organ.**

**第八十一条** 对有证据证明有犯罪事实，可能判处徒刑以上刑罚的犯罪嫌疑人、被告人，采取取保候审尚不足以防止发生下列社会危险性的，应当予以逮捕：

（一）可能实施新的犯罪的；

（二）有危害国家安全、公共安全或者社会秩序的现实危险的；

（三）可能毁灭、伪造证据，干扰证人作证或者串供的；

（四）可能对被害人、举报人、控告人实施打击报复的；

（五）企图自杀或者逃跑的。

批准或者决定逮捕，应当将犯罪嫌疑人、被告人涉嫌犯罪的性质、情节，认罪认罚等情况，作为是否可能发生社会危险性的考虑因

**Article 81** Where there is evidence to prove the facts of a crime and a criminal suspect or defendant may be sentenced to imprisonment or a heavier punishment, if release upon bail pending trial is insufficient to prevent any of the following dangers to the public, the criminal suspect or defendant shall be arrested: (1) the criminal suspect or defendant may commit a new crime;

(2) there is an actual danger to national security, public security, or social order;

(3) the criminal suspect or defendant may destroy or forge evidence, interfere with the testimony of a witness, or make a false confession in collusion;

(4) the criminal suspect or defendant may retaliate against a victim, informant, or accuser; or

(5) the criminal suspect or defendant attempts to commit suicide or escape.

The nature and circumstances of the crime committed by a criminal suspect or defendant, the plea of guilty and punishment acceptance by the criminal suspect or defendant, etc. shall be taken as possible risk factors for social dangers with regard to any approval or decision on arrest.

Where there is evidence to prove the facts of a crime and a criminal suspect or defendant may be sentenced to a fixed-term imprisonment of 10 years or a heavier punishment or there is evidence to prove the facts of a crime and a criminal suspect or defendant who once committed an intentional crime or has not been identified may be sentenced to imprisonment or a heavier

素。

对有证据证明有犯罪事实，可能判处十年有期徒刑以上刑罚的，或者有证据证明有犯罪事实，可能判处徒刑以上刑罚，曾经故意犯罪或者身份不明的，应当予以逮捕。

被取保候审、监视居住的犯罪嫌疑人、被告人违反取保候审、监视居住规定，情节严重的，可以予以逮捕。

punishment, the criminal suspect or defendant shall be arrested.

Where a criminal suspect or defendant released upon bail pending trial or under residential surveillance seriously violates the provisions on bail or residential surveillance, the criminal suspect or defendant may be arrested.

**第八十二条** 公安机关对于现行犯或者重大嫌疑分子，如果有下列情形之一的，可以先行拘留：

（一）正在预备犯罪、实行犯罪或者在犯罪后即时被发觉的；

（二）被害人或者在场亲眼看见的人指认他犯罪的；

（三）在身边或者住处发现有犯罪证据的；

（四）犯罪后企图自杀、逃跑

**Article 82 Public security organs may initially detain an active criminal or a major suspect under any of the following**

**conditions:** (1) If he is preparing to commit a crime, is in the process of committing a crime or is discovered immediately after committing a crime;

(2) If he is identified as having committed a crime by a victim or an eyewitness;

(3) If criminal evidence is found on his body or at his residence;

(4) If he attempts to commit suicide or escape after committing a crime, or he is a fugitive;

(5) If there is likelihood of his destroying or falsifying evidence or tallying confessions;

(6) If he does not tell his true name and address and his identity is unknown; and

(7) If he is strongly suspected of committing crimes from one place

或者在逃的；

to another, repeatedly, or in a gang.

（五）有毁灭、伪造证据或者

串供可能的；

（六）不讲真实姓名、住址，

身份不明的；

（七）有流窜作案、多次作

案、结伙作案重大嫌疑的。

### 第八十三条 公安机关在异地

执行拘留、逮捕的时候，应当通知被拘留、逮捕人所在地的公安机关，被拘留、逮捕人所在地的公安机关应当予以配合。

**Article 83** When a public security organ is to detain or arrest a person in another place, it shall inform the public security organ in the place where the person to be detained or arrested stays, and the public security organ there shall cooperate in the action.

### 第八十四条 对于有下列情形之一的

的人，任何公民都可以立即扭送公安机关、人民检察院或者人民法院处理：

**Article 84** The persons listed below may be seized outright by any citizen and delivered to a public security organ, a people's procuratorate or a people's court for handling: (1) Any person who is committing a crime or is discovered immediately after committing a crime;

(2) Any person who is wanted for arrest;

（一）正在实行犯罪或者在犯

(3) Any person who has escaped from prison; and

罪后即时被发觉的；

(4) Any person who is being pursued for arrest.

（二）通缉在案的；

（三）越狱逃跑的；

（四）正在被追捕的。

**第八十五条** 公安机关拘留人的时候，必须出示拘留证。

拘留后，应当立即将被拘留人送看守所羁押，至迟不得超过二十四小时。除无法通知或者涉嫌危害国家安全犯罪、恐怖活动犯罪通知可能有碍侦查的情形以外，应当在拘留后二十四小时以内，通知被拘留人的家属。有碍侦查的情形消失以后，应当立即通知被拘留人的家属。

**Article 85** When detaining a person, a public security organ must produce a detention warrant. After a person is detained, the detainee shall be immediately transferred to a jail for custody, no later than 24 hours thereafter. The family of a detainee shall be notified within 24 hours after detention, unless such notification is impossible or such notification may obstruct investigation in a case regarding compromising national security or terrorist activities. However, once such a situation that obstructs investigation disappears, the family of the detainee shall be immediately notified.

**第八十六条** 公安机关对被拘留的人，应当在拘留后的二十四小时以内进行讯问。在发现不应当拘留的时候，必须立即释放，发给释放证明。

**Article 86** A public security organ shall interrogate a detainee within 24 hours after detention. If it is discovered that the person should not have been detained, the person must be immediately released, and a certificate of release shall be issued to the person.

**第八十七条** 公安机关要求逮捕犯罪嫌疑人的时候，应当写出提请批准逮捕书，连同案卷材料、证据，一并移送同级人民检察院审查批准。必要的时候，人民检察院可以派人参加公安机关对于重大案件

**Article 87** When a public security organ wishes to arrest a criminal suspect, it shall submit a written request for approval of arrest together with the case file and evidence to the people's procuratorate at the same level for examination and approval. When necessary, the people's procuratorate may send procurators to participate in the public security organ's discussion of a major case.

的讨论。

**第八十八条** 人民检察院审查批准逮捕，可以讯问犯罪嫌疑人；有下列情形之一的，应当讯问犯罪嫌疑人：

（一）对是否符合逮捕条件有疑问的；

（二）犯罪嫌疑人要求向检察人员当面陈述的；

（三）侦查活动可能有重大违法行为的。

人民检察院审查批准逮捕，可以询问证人等诉讼参与人，听取辩护律师的意见；辩护律师提出要求的，应当听取辩护律师的意见。

**第八十九条** 人民检察院审查批准逮捕犯罪嫌疑人由检察长决定。重大案件应当提交检察委员会讨论决定。

**第九十条** 人民检察院对于公安机关提请批准逮捕的案件进行审

**Article 88 During the examination for approval of an arrest request, a people's procuratorate may interrogate the criminal suspect; and, under any of the following circumstances, must interrogate the criminal suspect:** (1) it has any doubt on whether the arrest conditions are met;

(2) the criminal suspect requests a statement before prosecutors;  
or

(3) any gross violation of law may have occurred during investigation.

During the examination for approval of an arrest request, a people's procuratorate may interview a witness and other litigation participants and hear the opinion of a defense lawyer; and, if a defense lawyer files a request for presenting an opinion, shall hear the opinion of the defense lawyer.

**Article 89 The chief procurator shall make the decision on a people's procuratorate's examination for approval of the arrest of a criminal suspect. Major cases shall be submitted to the procuratorial committee for discussion and decision.**

**Article 90 After a people's procuratorate has examined a case with respect to which a public security organ has submitted a request for approval of arrest, it shall decide according to the**



查后，应当根据情况分别作出批准逮捕或者不批准逮捕的决定。对于批准逮捕的决定，公安机关应当立即执行，并且将执行情况及时通知人民检察院。对于不批准逮捕的，人民检察院应当说明理由，需要补充侦查的，应当同时通知公安机关。

**circumstances of the case either to approve the arrest or disapprove the arrest. If it decides to approve the arrest, the public security organ shall execute it immediately and inform the people's procuratorate of the result without delay. If the people's procuratorate disapproves the arrest, it shall give its reasons therefor; and if it deems a supplementary investigation necessary, it shall at the same time notify the public security organ of the need.**

**第九十一条** 公安机关对被拘留的人，认为需要逮捕的，应当在拘留后的三日以内，提请人民检察院审查批准。在特殊情况下，提请审查批准的时间可以延长一日至四日。

**Article 91** If the public security organ deems it necessary to arrest a detainee, it shall, within three days after the detention, submit a request to the people's procuratorate for examination and approval. Under special circumstances, the time limit for submitting a request for examination and approval may be extended by one to four days. As to the arrest of a major suspect involved in crimes committed from one place to another, repeatedly, or in a gang, the time limit for submitting a request for examination and approval may be extended to 30 days.

对于流窜作案、多次作案、结伙作案的重大嫌疑分子，提请审查批准的时间可以延长至三十日。

The people's procuratorate shall decide either to approve or disapprove the arrest within seven days from the date of receiving the written request for approval of arrest submitted by a public security organ. If the people's procuratorate disapproves the arrest, the public security organ shall, upon receiving notification, immediately release the detainee and inform the people's procuratorate of the result without delay. If further investigation is necessary, and if the released person meets the conditions for being released upon bail pending trial or for residential surveillance, he shall be allowed to be released upon bail pending trial or subjected to residential surveillance according to law.

人民检察院应当自接到公安机关提请批准逮捕书后的七日以内，作出批准逮捕或者不批准逮捕的决定。人民检察院不批准逮捕的，公安机关应当在接到通知后立即释放，并且将执行情况及时通知人民



检察院。对于需要继续侦查，并且符合取保候审、监视居住条件的，依法取保候审或者监视居住。

**第九十二条** 公安机关对人民检察院不批准逮捕的决定，认为有错误的时候，可以要求复议，但是必须将被拘留的人立即释放。如果意见不被接受，可以向上一级人民检察院提请复核。上级人民检察院应当立即复核，作出是否变更的决定，通知下级人民检察院和公安机关执行。

**第九十三条** 公安机关逮捕人的时候，必须出示逮捕证。

逮捕后，应当立即将被逮捕人送看守所羁押。除无法通知的以外，应当在逮捕后二十四小时以内，通知被逮捕人的家属。

**第九十四条** 人民法院、人民检察院对于各自决定逮捕的人，公安机关对于经人民检察院批准逮捕的人，都必须在逮捕后的二十四小时以内进行讯问。在发现不应当逮

**Article 92** If the public security organ considers the people's procuratorate decision to disapprove an arrest to be incorrect, it may request a reconsideration but must immediately release the detainee. If the public security organ's opinion is not accepted, it may request a review by the people's procuratorate at the next higher level. The people's procuratorate at the higher level shall immediately review the matter, decide whether or not to make a change and notify the people's procuratorate at the lower level and the public security organ to implement its decision.

**Article 93** When making an arrest, a public security organ must produce an arrest warrant. After a person is arrested, the arrestee shall be immediately transferred to a jail for custody. The family of the arrestee shall be notified within 24 hours after arrest, unless such notification is impossible.

**Article 94** Interrogation must be conducted within 24 hours after the arrest, by a people's court or people's procuratorate with respect to a person it has decided to arrest, and by a public security organ with respect to a person it has arrested with the approval of the people's procuratorate. If it is found that the person should not have been arrested, he must be immediately released and issued a release certificate.

捕的时候，必须立即释放，发给释放证明。

**第九十五条** 犯罪嫌疑人、被告人被逮捕后，人民检察院仍应当对羁押的必要性进行审查。对不需要继续羁押的，应当建议予以释放或者变更强制措施。有关机关应当在十日以内将处理情况通知人民检察院。

**Article 95** After arresting a criminal suspect or defendant, a people's procuratorate shall continue to examine the necessity of custody. If custody is no longer necessary, it shall suggest a release of the arrestee or modification of the compulsory measure for the arrestee. The relevant authority shall notify the people's procuratorate of the handling result within 10 days.

**第九十六条** 人民法院、人民检察院和公安机关如果发现对犯罪嫌疑人、被告人采取强制措施不当的，应当及时撤销或者变更。公安机关释放被逮捕的人或者变更逮捕措施的，应当通知原批准的人民检察院。

**Article 96** If a people's court, a people's procuratorate or a public security organ finds that the compulsory measures adopted against a criminal suspect or defendant are inappropriate, such measures shall be cancelled or modified without delay. If a public security organ releases a person arrested or substitute the measure of arrest with a different measure, it shall notify the people's procuratorate that approved the arrest.

**第九十七条** 犯罪嫌疑人、被告人及其法定代理人、近亲属或者辩护人有权申请变更强制措施。人民法院、人民检察院和公安机关收到申请后，应当在三日以内作出决定；不同意变更强制措施的，应当告知申请人，并说明不同意的理

**Article 97** A criminal suspect or defendant or his/her legal representative, close relative, or defender shall have the right to apply for modifying a compulsory measure. A people's court, people's procuratorate, or public security organ shall make a decision within three days after receiving such an application; and, if a disapproval decision is made, the applicant shall be informed of the decision and reasons for disapproval.

由。

**第九十八条** 犯罪嫌疑人、被告人被羁押的案件，不能在本法规定的侦查羁押、审查起诉、一审、二审期限内办结的，对犯罪嫌疑人、被告人应当予以释放；需要继续查证、审理的，对犯罪嫌疑人、被告人可以取保候审或者监视居住。

**Article 98** Where a case involving a criminal suspect or defendant in custody cannot be closed within the period of custody during investigation, period of examination for prosecution, or period of trial at first instance or second instance as set forth in this Law, the criminal suspect or defendant shall be released; or, if further investigation or trial is necessary, may be bailed or placed under residential confinement.

**第九十九条** 人民法院、人民检察院或者公安机关对被采取强制措施法定期限届满的犯罪嫌疑人、被告人，应当予以释放、解除取保候审、监视居住或者依法变更强制措施。犯罪嫌疑人、被告人及其法定代理人、近亲属或者辩护人对于人民法院、人民检察院或者公安机关采取强制措施法定期限届满的，有权要求解除强制措施。

**Article 99** When the statutory term of a compulsory measure taken against a criminal suspect or defendant expires, a people's court, a people's procuratorate, or a public security organ shall release the criminal suspect or defendant, terminate a bail or residential surveillance, or legally modify a compulsory measure. A criminal suspect or defendant or his/her legal representative, close relative, or defender shall have the right to require termination of a compulsory measure taken by a people's court, a people's procuratorate, or a public security organ when the term of the compulsory measure expires.

**第一百条** 人民检察院在审查批准逮捕工作中，如果发现公安机关的侦查活动有违法情况，应当通知公安机关予以纠正，公安机关应

**Article 100** If in the process of examining and approving arrests, a people's procuratorate discovers illegalities in the investigatory activities of a public security organ, it shall notify the public security organ to make corrections, and the public security organ shall notify the people's procuratorate of the corrections it has made.

当将纠正情况通知人民检察院。

## 第七章 附带民事诉讼

## Chapter VII Incidental Civil Actions

**第一百零一条** 被害人由于被告人的犯罪行为而遭受物质损失的，在刑事诉讼过程中，有权提起附带民事诉讼。被害人死亡或者丧失行为能力的，被害人的法定代理人、近亲属有权提起附带民事诉讼。

**Article 101** Where a victim has suffered any material loss as a result of the defendant's crime, the victim shall have the right to institute an incidental civil action during criminal proceedings. If the victim is dead or has lost capacity of conduct, his/her legal representative or close relative shall have the right to institute an incidental civil action. Where state property or collective property has suffered any loss, a people's procuratorate may institute an incidental civil action along with a public prosecution.

如果是国家财产、集体财产遭受损失的，人民检察院在提起公诉的时候，可以提起附带民事诉讼。

**第一百零二条** 人民法院在必要的时候，可以采取保全措施，查封、扣押或者冻结被告人的财产。附带民事诉讼原告人或者人民检察院可以申请人民法院采取保全措施。人民法院采取保全措施，适用民事诉讼法的有关规定。

**Article 102** A people's court may, when necessary, take a preservative measure to seize, impound, or freeze the property of a defendant. In an incidental civil action, the plaintiff or the people's procuratorate may apply to the people's court for taking a preservative measure. Where a people's court takes a preservative measure, the relevant provisions of the Civil Procedure Law shall apply.

**第一百零三条** 人民法院审理附带民事诉讼案件，可以进行调解，或者根据物质损失情况作出判

**Article 103** When trying an incidental civil case, a people's court may conduct mediation or render a judgment or ruling based on the material loss.

决、裁定。

#### 第一百零四条 附带民事诉讼

应当同刑事案件一并审判，只有为了防止刑事案件审判的过分迟延，才可以在刑事案件审判后，由同一审判组织继续审理附带民事诉讼。

**Article 104** An incidental civil action shall be heard together with the criminal case. Only for the purpose of preventing excessive delay in a trial of the criminal case may the same judicial organization, after completing the trial of the criminal case, continue to hear the incidental civil action.

### 第八章 期间、送达

### Chapter VIII Time Periods and Service

#### 第一百零五条 期间以时、

日、月计算。

**Article 105** Time periods shall be calculated by the hour, the day and the month. The hour and day from which a time period begins shall not be counted as within the time period.

期间开始的时和日不算在期间以内。

A legally prescribed time period shall not include travelling time. Appeals or other documents that have been mailed before the expiration of the time period shall not be regarded as overdue.

法定期间不包括路途上的时间。上诉状或者其他文件在期满前已经交邮的，不算过期。

Where the last day of a period falls on a holiday, the expiry date of the period shall be the first day after the holiday, but the custody period of a criminal suspect or defendant shall terminate on the expiry date and may not be extended for holidays.

期间的最后一日为节假日的，以节假日后的第一日为期满日期，但犯罪嫌疑人、被告人或者罪犯在押期间，应当至期满之日为止，不得因节假日而延长。

#### 第一百零六条 当事人由于不

能抗拒的原因或者有其他正当理由

**Article 106** When a party cannot meet a deadline due to irresistible causes or for other legitimate reasons, he may, within five days after the obstacle is removed, apply to continue the proceedings that should have been completed

而耽误期限的，在障碍消除后五日以内，可以申请继续进行应当在期限满以前完成的诉讼活动。

前款申请是否准许，由人民法院裁定。

**第一百零七条** 送达传票、通知书和其他诉讼文件应当交给收件人本人；如果本人不在，可以交给他的成年家属或者所在单位的负责人员代收。

收件人本人或者代收人拒绝接收或者拒绝签名、盖章的时候，送达人可以邀请他的邻居或者其他见证人到场，说明情况，把文件留在他的住处，在送达证上记明拒绝的事由、送达的日期，由送达人签名，即认为已经送达。

**before the expiration of the time period.** A people's court shall decide whether or not to approve the application described in the preceding paragraph.

**Article 107 Summons, notices and other court documents shall be delivered to the addressee himself; if the addressee is absent, the documents may be received on his behalf by an adult member of his family or a responsible person of employer.** If the addressee himself or a recipient on his behalf refuses to receive the documents or refuses to sign or affix his seal to the receipt, the person serving the documents may ask the addressee's neighbours or other witnesses to the scene, explain the situation to them, leave the documents at the addressee's residence, record on the service certificate the particulars of the refusal and the date of service and sign his name on it; the service shall thus be deemed to have been completed.

## 第九章 其他规定

**第一百零八条** 本法下列用语的含意是：

（一）“侦查”是指公安机关、人民检察院对于刑事案件，依

## Chapter IX Other Provisions

**Article 108 For the purpose of this law, the definitions of the following terms are:** (1) "Investigation" means the work relating to collection of evidence, and investigation and ascertainment of a criminal case and relevant coercive measures carried out in accordance with the law by public security authorities and the people's procuratorate.

照法律进行的收集证据、查明案情的工作和有关的强制性措施；

（二）“当事人”是指被害人、自诉人、犯罪嫌疑人、被告人、附带民事诉讼的原告人和被告人；

（三）“法定代理人”是指被代理人的父母、养父母、监护人和负有保护责任的机关、团体的代表；

（四）“诉讼参与人”是指当事人、法定代理人、诉讼代理人、辩护人、证人、鉴定人和翻译人员；

（五）“诉讼代理人”是指公诉案件的被害人及其法定代理人或者近亲属、自诉案件的自诉人及其法定代理人委托代为参加诉讼的人和附带民事诉讼的当事人及其法定代理人委托代为参加诉讼的人；

（六）“近亲属”是指夫、妻、父、母、子、女、同胞兄弟姊

(2) "Parties" means victims, private prosecutors, criminal suspects, defendants and the plaintiffs and defendants in incidental civil actions.

(3) "Legal representatives" means the parents, foster parents or guardians of a person being represented and representatives of the State organ or public organization responsible for that person's protection;

(4) "Participants in the proceedings" means the parties, legal representatives, agents ad litem, defenders, witnesses, expert witnesses and interpreters;

(5) "Agents ad litem" means persons entrusted by victims in cases of public prosecution and their legal representatives or close relatives and by private prosecutors in cases of private prosecution and their legal representatives to participate in legal proceedings on their behalf, and persons entrusted by parties in incidental civil actions and their legal representatives to participate in legal proceedings on their behalf.

(6) "close relatives" means a person's husband or wife, father, mother, sons, daughters, and brothers and sisters born of the same parents.



妹。

## 第二编 立案、侦查和提起公诉

## Part II Filing a Case, Investigation and Institution of Public Prosecution

### 第一章 立案

### Chapter I Filing a Case

**第一百零九条** 公安机关或者人民检察院发现犯罪事实或者犯罪嫌疑人，应当按照管辖范围，立案侦查。

**Article 109** Public security organs or people's procuratorates shall, upon discovering facts of crimes or criminal suspects, file the cases for investigation within the scope of their jurisdiction.

**第一百一十条** 任何单位和个人发现有犯罪事实或者犯罪嫌疑人，有权利也有义务向公安机关、人民检察院或者人民法院报案或者举报。

**Article 110** Any entity or individual, upon discovering facts of a crime or a criminal suspect, shall have the right and duty to report the case or provide information to a public security organ, a people's procuratorate or a people's court. When his personal or property rights are infringed upon, the victim shall have the right to report to a public security organ, a people's procuratorate or a People's Court about the facts of the crime or bring a accusation to it against the criminal suspect.

被害人对侵犯其人身、财产权利的犯罪事实或者犯罪嫌疑人，有权向公安机关、人民检察院或者人民法院报案或者控告。

The public security organ, the people's procuratorate or the people's court shall accept all reports, accusation and information. If a case does not fall under its jurisdiction, it shall refer the case to the competent authority and notify the person who made the report, lodged the accusation or provided the information. If the case does not fall under its jurisdiction but calls for emergency measures, it shall take emergency measures before referring the case to the competent authority.

公安机关、人民检察院或者人民法院对于报案、控告、举报，都应当接受。对于不属于自己管辖的，应当移送主管机关处理，并且通知报案人、控告人、举报人；对

Where an offender delivers himself up to a public security organ, a people's procuratorate or a people's court, the provisions of the 3rd paragraph shall apply.



于不属于自己管辖而又必须采取紧急措施的，应当先采取紧急措施，然后移送主管机关。

犯罪人向公安机关、人民检察院或者人民法院自首的，适用第三款规定。

**第一百一十一条** 报案、控告、举报可以用书面或者口头提出。接受口头报案、控告、举报的工作人员，应当写成笔录，经宣读无误后，由报案人、控告人、举报人签名或者盖章。

接受控告、举报的工作人员，应当向控告人、举报人说明诬告应负的法律后果。但是，只要不是捏造事实，伪造证据，即使控告、举报的事实有出入，甚至是错告的，也要和诬告严格加以区别。

公安机关、人民检察院或者人民法院应当保障报案人、控告人、举报人及其近亲属的安全。报案人、控告人、举报人如果不愿公开自己的姓名和报案、控告、举报的

**Article 111 Reports, accusation and information may be filed in writing or orally. The officer receiving an oral report, accusation or information shall make a written record of it, which, after being read to the reporter, accusant or informant and found free of error, shall be signed or sealed by him or her. The officer receiving the accusation or information shall clearly explain to the accusant or the informant the legal responsibility that shall be incurred for making a false accusation. However, an accusation or information that does not accord with the facts, or even a mistaken accusation shall be strictly distinguished from a false accusation, as long as no fabrication of facts or falsification of evidence is involved.**

Public security organs, people's procuratorate s and people's courts shall ensure the safety of reporters, accusants and informants as well as their close relatives. If the reporters, accusants or informants wish not to make their names and acts of reporting, accusing or informing known to the public, these shall be kept confidential for them.

行为，应当为他保守秘密。

**第一百一十二条** 人民法院、人民检察院或者公安机关对于报案、控告、举报和自首的材料，应当按照管辖范围，迅速进行审查，认为有犯罪事实需要追究刑事责任的时候，应当立案；认为没有犯罪事实，或者犯罪事实显著轻微，不需要追究刑事责任的时候，不予立案，并且将不立案的原因通知控告人。控告人如果不服，可以申请复议。

**Article 112** A People's Court, people's procuratorate or public security organ shall, within the scope of its jurisdiction, promptly examine the materials provided by a reporter, accusant or informant and the confession of an offender who has voluntarily surrendered. If it believes that there are facts of a crime and criminal liability should be investigated, it shall file a case. If it believes that there are no facts of a crime or that the facts are obviously slight and do not require investigation of criminal liability, it shall not file a case and shall notify the accusant of the reason. If the accusant does not agree with the decision, he may ask for reconsideration.

**第一百一十三条** 人民检察院认为公安机关对应当立案侦查的案件而不立案侦查的，或者被害人认为公安机关对应当立案侦查的案件而不立案侦查，向人民检察院提出的，人民检察院应当要求公安机关说明不立案的理由。人民检察院认为公安机关不立案理由不能成立的，应当通知公安机关立案，公安机关接到通知后应当立案。

**Article 113** Where a people's procuratorate considers that a case should be filed for investigation by a public security organ but the latter has not done so, or where a victim considers that a case should be filed for investigation by a public security organ but the latter has not done so and the victim has brought the matter to a people's procuratorate, the people's procuratorate shall request the public security organ to state the reasons for not filing the case. If the people's procuratorate considers that the reasons for not filing the case given by the public security organ are untenable, it shall notify the public security organ to file the case, and upon receiving the notification, the public security organ shall file the case.

**第一百一十四条** 对于自诉案

**Article 114** As to a case of private prosecution, the victim shall have the right to bring a suit directly to a people's court.

件，被害人有权向人民法院直接起诉。被害人死亡或者丧失行为能力的，被害人的法定代理人、近亲属有权向人民法院起诉。人民法院应当依法受理。

**If the victim is dead or has lost his ability of conduct, his legal representatives and close relatives shall have the right to bring a suit to a people's court. The people's court shall accept it according to law.**

## 第二章 侦查

## Chapter II Investigation

### 第一节 一般规定

### Section 1 General Provisions

**第一百一十五条** 公安机关对已经立案的刑事案件，应当进行侦查，收集、调取犯罪嫌疑人有罪或者无罪、罪轻或者罪重的证据材料。对现行犯或者重大嫌疑分子可以依法先行拘留，对符合逮捕条件的犯罪嫌疑人，应当依法逮捕。

**Article 115** With respect to a criminal case which has been filed, the public security organ shall carry out investigation, collecting and obtaining evidence to prove the criminal suspect guilty or innocent or to prove the crime to be minor or grave. Active criminals or major suspects may be detained first according to law, and criminal suspects who meet the conditions for arrest shall be arrested according to law.

**第一百一十六条** 公安机关经过侦查，对有证据证明有犯罪事实的案件，应当进行预审，对收集、调取的证据材料予以核实。

**Article 116** After investigation, the public security organ shall start preliminary inquiry into a case for which there is evidence that supports the facts of the crime, in order to verify the evidence which has been collected and obtained.

**第一百一十七条** 当事人和辩护人、诉讼代理人、利害关系人对于司法机关及其工作人员有下列行为之一的，有权向该机关申诉或者

**Article 117** A party concerned or a defender or agent ad litem thereof or an interested party shall have the right to file a petition or accusation with a judicial authority regarding any of the following conduct of the judicial authority or any of its personnel: (1) refusing to release a criminal suspect or defendant or terminate or modify a compulsory measure taken, when the

控告：

statutory term of the compulsory measure expires;

(2) refusing to refund a guaranty that shall be refunded;

（一）采取强制措施法定期限届满，不予以释放、解除或者变更的；

(3) seizing, impounding, or freezing any property irrelevant to a case;

（二）应当退还取保候审保证金不退还的；

(4) refusing to terminate a measure of seizing, impounding, or freezing property that shall be terminated; or

（三）对与案件无关的财物采取查封、扣押、冻结措施的；

(5) embezzling, misappropriating, distributing in private, replacing, or illegally using any seized, impounded, or frozen property in violation of rules.

（四）应当解除查封、扣押、冻结不解除的；

The authority accepting the petition or accusation shall handle it in a timely manner. Against the handling result, the party concerned or the defender or agent ad litem thereof or the interested party may file a petition with the people's procuratorate at the same level; or, if the case is directly accepted by the people's procuratorate, may file a petition with the people's procuratorate at the next higher level. The people's procuratorate shall examine the petition in a timely manner and, if it is true, notify the relevant authority to make correction.

（五）贪污、挪用、私分、调换、违反规定使用查封、扣押、冻结的财物的。

受理申诉或者控告的机关应当及时处理。对处理不服的，可以向同级人民检察院申诉；人民检察院直接受理的案件，可以向上一级人民检察院申诉。人民检察院对申诉应当及时进行审查，情况属实的，通知有关机关予以纠正。

## 第二节 讯问犯罪嫌疑人

## Section 2 Interrogation of a Criminal Suspect

**第一百一十八条** 讯问犯罪嫌疑人必须由人民检察院或者公安机关的侦查人员负责进行。讯问的时候，侦查人员不得少于二人。

犯罪嫌疑人被送交看守所羁押以后，侦查人员对其进行讯问，应当在看守所内进行。

**第一百一十九条** 对不需要逮捕、拘留的犯罪嫌疑人，可以传唤到犯罪嫌疑人所在市、县内的指定地点或者到他的住处进行讯问，但是应当出示人民检察院或者公安机关的证明文件。对在现场发现的犯罪嫌疑人，经出示工作证件，可以口头传唤，但应当在讯问笔录中注明。

传唤、拘传持续的时间不得超过十二小时；案情特别重大、复杂，需要采取拘留、逮捕措施的，传唤、拘传持续的时间不得超过二十四小时。

不得以连续传唤、拘传的形式变相拘禁犯罪嫌疑人。传唤、拘传

**Article 118** Interrogation of a criminal suspect must be conducted by the investigators of a people's procuratorate or public security organ. During an interrogation, there must be no fewer than two investigators participating. After a criminal suspect is transferred to a jail for custody, the investigators shall conduct interrogation of the criminal suspect inside the jail.

**Article 119** A criminal suspect for whom an arrest or detention is not necessary may be summoned to a designated place in the city or county where the criminal suspect resides or his/her residence for interrogation, but credentials from the people's procuratorate or public security organ shall be produced. A criminal suspect discovered on the scene may be verbally summoned after a work pass is produced, but it shall be noted in the interrogation transcript. The duration of interrogation by summons or forced appearance may not exceed 12 hours; or, if it is necessary to detain or arrest a criminal suspect in an extraordinarily significant or complicated case, the duration of interrogation by summons or forced appearance may not exceed 24 hours.

A criminal suspect shall not be actually held in custody by successive summons or forced appearance. During the period of interrogation by summons or forced appearance, the meals and necessary rest time of the criminal suspect shall be ensured.

犯罪嫌疑人，应当保证犯罪嫌疑人的饮食和必要的休息时间。

**第一百二十条** 侦查人员在讯问犯罪嫌疑人的时候，应当首先讯问犯罪嫌疑人是否有犯罪行为，让他陈述有罪的情节或者无罪的辩解，然后向他提出问题。犯罪嫌疑人对侦查人员的提问，应当如实回答。但是对与本案无关的问题，有拒绝回答的权利。

侦查人员在讯问犯罪嫌疑人的时候，应当告知犯罪嫌疑人享有的诉讼权利，如实供述自己罪行可以从宽处理和认罪认罚的法律规定。

**第一百二十一条** 讯问聋、哑的犯罪嫌疑人，应当有通晓聋、哑手势的人参加，并且将这种情况记明笔录。

**第一百二十二条** 讯问笔录应当交犯罪嫌疑人核对，对于没有阅读能力的，应当向他宣读。如果记载有遗漏或者差错，犯罪嫌疑人可以提出补充或者改正。犯罪嫌疑人

**Article 120** When interrogating a criminal suspect, the investigators shall first ask the criminal suspect whether or not he has committed any criminal act, and let him state the circumstances of his guilt or explain his innocence; then they may ask him questions. The criminal suspect shall answer the investigators' questions truthfully, but he shall have the right to refuse to answer any questions that are irrelevant to the case. When interrogating a criminal suspect, the investigators shall inform the criminal suspect of his/her litigation rights, as well as the legal provisions allowing for lenient punishment for those who truthfully confess their crimes and possible legal consequence of plea of guilty and punishment acceptance.

**Article 121** During the interrogation of a criminal suspect who is deaf or mute, an officer who has a good command of sign language shall participate, and such circumstances shall be noted in the record.

**Article 122** The record of an interrogation shall be shown to the criminal suspect for checking; if the criminal suspect cannot read, the record shall be read to him. If there are omissions or errors in the record, the criminal suspect may make additions or corrections. When the criminal suspect acknowledges that the record is free from error, he shall sign or affix his seal to it. The investigators shall also sign the

承认笔录没有错误后，应当签名或者盖章。侦查人员也应当在笔录上签名。犯罪嫌疑人请求自行书写供述的，应当准许。必要的时候，侦查人员也可以要犯罪嫌疑人亲笔书写供词。

**record. If the criminal suspect requests to write a personal statement, he shall be permitted to do so. When necessary, the investigators may also ask the criminal suspect to write a personal statement.**

**第一百二十三条** 侦查人员在讯问犯罪嫌疑人的时候，可以对讯问过程进行录音或者录像；对于可能判处无期徒刑、死刑的案件或者其他重大犯罪案件，应当对讯问过程进行录音或者录像。

**Article 123** When interrogating a criminal suspect, the investigators may keep an audio or visual record of the interrogation process; and, in a case regarding a crime punishable by life imprisonment or death penalty or any other significant crime, the investigators shall keep an audio or visual record of the interrogation process. An audio or visual record shall cover the entire process of interrogation to ensure integrity.

录音或者录像应当全程进行，保持完整性。

### 第三节 询问证人

### Section 3 Questioning of a Witness

**第一百二十四条** 侦查人员询问证人，可以在现场进行，也可以到证人所在单位、住处或者证人提出的地点进行，在必要的时候，可以通知证人到人民检察院或者公安机关提供证言。在现场询问证人，应当出示工作证件，到证人所在单位、住处或者证人提出的地点询问

**Article 124** The investigators may interview a witness on the crime scene, at the place of the witness's employer or residence, or at a place proposed by the witness, and, when necessary, may notify a witness to provide testimony at the people's procuratorate or public security organ. When interviewing a witness on the crime scene, the investigators shall produce their work passes, and, when interviewing a witness at the place of the witness's employer or residence or a place proposed by the witness, the investigators shall produce the credentials from the people's procuratorate or public security organ. Witnesses shall be interviewed individually.



证人，应当出示人民检察院或者公安机关的证明文件。

询问证人应当个别进行。

**第一百二十五条** 询问证人，应当告知他应当如实地提供证据、证言和有意作伪证或者隐匿罪证要负的法律后果。

**第一百二十六条** 本法第一百二十二条的规定，也适用于询问证人。

**第一百二十七条** 询问被害人，适用本节各条规定。

#### 第四节 勘验、检查

**第一百二十八条** 侦查人员对于与犯罪有关的场所、物品、人身、尸体应当进行勘验或者检查。在必要的时候，可以指派或者聘请具有专门知识的人，在侦查人员的主持下进行勘验、检查。

**第一百二十九条** 任何单位和个人，都有义务保护犯罪现场，并

**Article 125** When a witness is questioned, he shall be instructed to provide evidence and give testimony truthfully and shall be informed of the legal responsibility that shall be incurred for intentionally giving false testimony or concealing criminal evidence.

**Article 126** The provisions of Article 122 of this Law shall also apply to the questioning of witnesses.

**Article 127** The provisions of all articles in this Section shall apply to the questioning of victims.

#### Section 4 Inquest and Examination

**Article 128** Investigators shall conduct an inquest or examination of the sites, objects, people and corpses relevant to a crime. When necessary, experts may be assigned or invited to conduct an inquest or examination under the direction of the investigators.

**Article 129** Each and every entity and individual shall have the duty to preserve the scene of a crime and to immediately notify a public security organ to send officers to hold an inquest.



且立即通知公安机关派员勘验。

**第一百三十条** 侦查人员执行勘验、检查，必须持有人民检察院或者公安机关的证明文件。

**第一百三十一条** 对于死因不明的尸体，公安机关有权决定解剖，并且通知死者家属到场。

**第一百三十二条** 为了确定被害人、犯罪嫌疑人的某些特征、伤害情况或者生理状态，可以对人身进行检查，可以提取指纹信息，采集血液、尿液等生物样本。

犯罪嫌疑人如果拒绝检查，侦查人员认为必要的时候，可以强制检查。

检查妇女的身体，应当由女工作人员或者医师进行。

**第一百三十三条** 勘验、检查的情况应当写成笔录，由参加勘验、检查的人和见证人签名或者盖章。

**Article 130** To conduct an inquest or examination, the investigators must have papers issued by a people's procuratorate or a public security organ.

**Article 131** If the cause of a death is unclear, a public security organ shall have the power to order an autopsy and shall notify the family members of the deceased to be present.

**Article 132** To determine certain characteristics, condition of injury, or physiological condition of a victim or criminal suspect, the body of the victim or criminal suspect may be examined, and fingerprint information and blood, urine, and other biological samples may be collected. If a criminal suspect refuses to be examined, the investigators, when they deem it necessary, may conduct a compulsory examination.

Examination of the persons of women shall be conducted by female officers or doctors.

**Article 133** A record shall be made of the circumstances of an inquest or examination, and it shall be signed or sealed by the participants in the inquest or examination and the eyewitnesses.

**第一百三十四条** 人民检察院审查案件的时候，对公安机关的勘验、检查，认为需要复验、复查时，可以要求公安机关复验、复查，并且可以派检察人员参加。

**Article 134** If, in reviewing a case, a people's procuratorate deems it necessary to repeat an inquest or examination that has been done by a public security organ, it may ask the latter to conduct another inquest or examination and may send procurators to participate in it.

**第一百三十五条** 为了查明案情，在必要的时候，经公安机关负责人批准，可以进行侦查实验。

**Article 135** When necessary and with the approval of the chief of a public security organ, investigative reenactments may be conducted in order to clarify the circumstances of a case. Transcripts shall be prepared for an investigative reenactment, to which the signatures or seals of participants in the investigative reenactment shall be affixed.

侦查实验的情况应当写成笔录，由参加实验的人签名或者盖章。

In conducting investigative reenactments, it shall be forbidden to take any action which is hazardous, humiliating to anyone, or offensive to public morals.

侦查实验，禁止一切足以造成危险、侮辱人格或者有伤风化的行为。

## 第五节 搜查

## Section 5 Search

**第一百三十六条** 为了收集犯罪证据、查获犯罪人，侦查人员可以对犯罪嫌疑人以及可能隐藏罪犯或者犯罪证据的人的身体、物品、住处和其他有关的地方进行搜查。

**Article 136** In order to collect criminal evidence and track down an offender, investigators may search the person, belongings and residence of the criminal suspect and anyone who might be hiding a criminal or criminal evidence, as well as other relevant places.

**第一百三十七条** 任何单位和个人，有义务按照人民检察院和公

**Article 137** Any entity or individual shall have the duty, as required by the people's procuratorate or the public security organ, to hand over material evidence, documentary evidence

安机关的要求，交出可以证明犯罪嫌疑人有罪或者无罪的物证、书证、视听资料等证据。

**or audio-visual material which may prove the criminal suspect guilty or innocent.**

**第一百三十八条** 进行搜索，必须向被搜查人出示搜查证。

在执行逮捕、拘留的时候，遇有紧急情况，不另用搜查证也可以进行搜索。

**Article 138** When a search is to be conducted, a search warrant must be produced to the person to be searched. If an emergency occurs when an arrest or detention is being made, a search may be conducted without a search warrant.

**第一百三十九条** 在搜查的时候，应当有被搜查人或者他的家属，邻居或者其他见证人在场。

搜查妇女的身体，应当由女工作人员进行。

**Article 139** During a search, the person to be searched or his family members, neighbours or other eyewitnesses shall be present at the scene. Searches of the persons of women shall be conducted by female officers.

**第一百四十条** 搜查的情况应当写成笔录，由侦查人员和被搜查人或者他的家属，邻居或者其他见证人签名或者盖章。如果被搜查人或者他的家属在逃或者拒绝签名、盖章，应当在笔录上注明。

**Article 140** A record shall be made of the circumstances of a search, and it shall be signed or sealed by the investigators and the person searched or his family members, neighbours or other eyewitnesses. If the person searched or his family members have become fugitives or refuse to sign or affix their seals to the record, this shall be noted in the record.

**第六节 查封、扣押物证、书证**

**Section 6 Seizure and Impounding of Material Evidence and Documentary Evidence**

**第一百四十一条** 在侦查活动中发现的可用以证明犯罪嫌疑人有罪或者无罪的各种财物、文件，应当查封、扣押；与案件无关的财物、文件，不得查封、扣押。

对查封、扣押的财物、文件，要妥善保管或者封存，不得使用、调换或者损毁。

**第一百四十二条** 对查封、扣押的财物、文件，应当会同在场见证人和被查封、扣押财物、文件持有人查点清楚，当场开列清单一式二份，由侦查人员、见证人和持有人签名或者盖章，一份交给持有人，另一份附卷备查。

**第一百四十三条** 侦查人员认为需要扣押犯罪嫌疑人的邮件、电报的时候，经公安机关或者人民检察院批准，即可通知邮电机关将有关的邮件、电报检交扣押。

不需要继续扣押的时候，应即通知邮电机关。

**Article 141** Any articles and documents discovered in investigation activities that may be used to prove a criminal suspect's guilt or innocence shall be seized or impounded. Articles and documents which are irrelevant to the case may not be seized or impounded. Seized or impounded articles and documents shall be properly kept or sealed up for safekeeping and may not be utilized or damaged.

**Article 142** All seized or impounded articles and documents shall be carefully checked by the investigators jointly with the eyewitnesses and the holder of the articles or documents; a detailed list shall be made in duplicate on the spot and shall be signed or sealed by the investigators, the eyewitnesses and the holder. One copy of the list shall be given to the holder, and the other copy shall be kept on file for reference.

**Article 143** If the investigators deem it necessary to seize the mail or telegrams of a criminal suspect, they may, upon approval of a public security organ or a people's procuratorate, notify the post and telecommunications offices to check and hand over the relevant mail and telegrams for seizure. When it becomes unnecessary to continue a seizure, the post and telecommunications offices shall be immediately notified.

**第一百四十四条** 人民检察院、公安机关根据侦查犯罪的需要，可以依照规定查询、冻结犯罪嫌疑人存款、汇款、债券、股票、基金份额等财产。有关单位和个人应当配合。

**Article 144** The people's procuratorates and the public security organs may, as required by investigation of crimes, inquire into or freeze criminal suspects' deposits, remittances, bonds, stocks, bond shares or other properties according to regulations. Entities or individuals concerned shall provide cooperation therein. If the deposits, remittances, bonds, stocks, bond shares or other properties of the criminal suspects have been frozen, they shall not be frozen for a second time.

犯罪嫌疑人的存款、汇款、债券、股票、基金份额等财产已被冻结的，不得重复冻结。

**第一百四十五条** 对查封、扣押的财物、文件、邮件、电报或者冻结的存款、汇款、债券、股票、基金份额等财产，经查明确实与案件无关的，应当在三日以内解除查封、扣押、冻结，予以退还。

**Article 145** If any seized articles, documents, mail, telegrams or frozen deposits, remittances, bonds, stocks, bond shares or other properties are proved through investigation to be truly irrelevant to a case, the seizure, impounding and freeze shall be cancelled within three days, and the above property shall be returned.

## 第七节 鉴定

## Section 7 Expert Identification or Evaluation

**第一百四十六条** 为了查明案情，需要解决案件中某些专门性问题的时候，应当指派、聘请有专门知识的人进行鉴定。

**Article 146** When certain special problems relating to a case need to be solved in order to clarify the circumstances of the case, experts with specialized knowledge shall be assigned or invited to give their evaluations.

**第一百四十七条** 鉴定人进行鉴定后，应当写出鉴定意见，并且

**Article 147** After completion of identification or evaluation, an identification or evaluation expert shall prepare a written expert opinion and sign it. An identification or evaluation expert who intentionally conducts false identification or evaluation shall be

签名。

subject to legal liability.

鉴定人故意作虚假鉴定的，应当承担法律责任。

**第一百四十八条** 侦查机关应当将用作证据的鉴定意见告知犯罪嫌疑人、被害人。如果犯罪嫌疑人、被害人提出申请，可以补充鉴定或者重新鉴定。

**Article 148** The investigation organ shall notify the criminal suspect and the victim of the opinion of the expert which will be used as evidence in his case. A supplementary expert identification or evaluation or another expert identification or evaluation may be conducted upon application submitted by the criminal suspect or the victim.

**第一百四十九条** 对犯罪嫌疑人作精神病鉴定的期间不计入办案期限。

**Article 149** The period during which the mental illness of a criminal suspect is under verification shall not be included in the period of time for handling the case.

## 第八节 技术侦查措施

## Section 8 Technical Investigation Measures

**第一百五十条** 公安机关在立案后，对于危害国家安全犯罪、恐怖活动犯罪、黑社会性质的组织犯罪、重大毒品犯罪或者其他严重危害社会的犯罪案件，根据侦查犯罪的需要，经过严格的批准手续，可以采取技术侦查措施。

**Article 150** After opening a case regarding a crime of compromising national security, a crime of terrorist activities, an organized crime of a gangland nature, a significant drug crime, or any other crime seriously endangering the society, a public security organ may, as needed for criminal investigation, take technical investigation measures after completing strict approval formalities. With regard to a case involving a major crime of serious infringement upon the personal rights of citizens by taking advantage of functions, after placing the case on file, the people's procuratorate may, as needed for investigation of the crime and upon going through stringent approval procedures, employ technical investigation measures, which shall be carried out by the relevant authorities in accordance with applicable regulations.

人民检察院在立案后，对于利用职权实施的严重侵犯公民人身权利的重大犯罪案件，根据侦查犯罪

To capture a wanted criminal suspect or defendant or a fugitive

的需要，经过严格的批准手续，可以采取技术侦查措施，按照规定交有关机关执行。

criminal suspect or defendant whose arrest has been approved or decided, technical investigation measures necessary for capture may be taken with approval.

追捕被通缉或者批准、决定逮捕的在逃的犯罪嫌疑人、被告人，经过批准，可以采取追捕所必需的技术侦查措施。

**第一百五十一条** 批准决定应当根据侦查犯罪的需要，确定采取技术侦查措施的种类和适用对象。批准决定自签发之日起三个月以内有效。对于不需要继续采取技术侦查措施的，应当及时解除；对于复杂、疑难案件，期限届满仍有必要继续采取技术侦查措施的，经过批准，有效期可以延长，每次不得超过三个月。

**Article 151** In an approval decision, the types and scopes of application of the technical investigation measures to be taken shall be determined as needed for criminal investigation. An approval decision shall be valid for three months from the date issued. When technical investigation measures are no longer necessary, they shall be terminated in a timely manner; or if it is necessary to continue to take technical investigation measures in a complicated or difficult case after the term of validity expires, the term of validity may be extended with approval, but each extension may not exceed three months.

**第一百五十二条** 采取技术侦查措施，必须严格按照批准的措施种类、适用对象和期限执行。

**Article 152** Where technical investigation measures are taken, such measures must be executed in strict accordance with the approved types, scopes of application, and terms. The investigators shall keep confidential any state secret, trade secret, or personal privacy known in the course of taking technical investigation measures; and must destroy in a timely manner materials irrelevant to a case acquired by taking technical investigation measures.

侦查人员对采取技术侦查措施过程中知悉的国家秘密、商业秘密和个人隐私，应当保密；对采取技

Materials acquired by taking technical investigation measures may



术侦查措施获取的与案件无关的材料，必须及时销毁。

采取技术侦查措施获取的材料，只能用于对犯罪的侦查、起诉和审判，不得用于其他用途。

公安机关依法采取技术侦查措施，有关单位和个人应当配合，并对有关情况予以保密。

**第一百五十三条** 为了查明案情，在必要的时候，经公安机关负责人决定，可以由有关人员隐匿其身份实施侦查。但是，不得诱使他人犯罪，不得采用可能危害公共安全或者发生重大人身危险的方法。

对涉及给付毒品等违禁品或者财物的犯罪活动，公安机关根据侦查犯罪的需要，可以依照规定实施控制下交付。

**第一百五十四条** 依照本节规定采取侦查措施收集的材料在刑事诉讼中可以作为证据使用。如果使用该证据可能危及有关人员的人身

only be used for criminal investigation, prosecution, and trial, and may not be used for other purposes.

When a public security organ takes technical investigation measures in accordance with law, the relevant entities and individuals shall provide cooperation and keep relevant information confidential.

**Article 153** To find out the fact of a case, when necessary, criminal investigation may be conducted by relevant personnel anonymously as decided by the chief of a public security organ. However, such personnel shall not induce others to commit a crime and shall not use a method which may compromise public security or cause any serious danger to personal safety. For criminal activities involving the delivery of drugs and other contraband or property, a public security organ may, as needed for criminal investigation, conduct controlled delivery according to relevant legal provisions.

**Article 154** Materials collected by taking technical investigation measures under this Section may be used as evidence in criminal proceedings. If any use of such evidence may endanger the personal safety of relevant persons or may cause other serious consequences, protective measures such as non-disclosure of the identity of relevant persons or



安全，或者可能产生其他严重后果的，应当采取不暴露有关人员身份、技术方法等保护措施，必要的时候，可以由审判人员在庭外对证据进行核实。

**relevant technical methods shall be taken. When necessary, evidence may be verified by judges out of court.**

## 第九节 通缉

## Section 9 Wanted Orders

**第一百五十五条** 应当逮捕的犯罪嫌疑人如果在逃，公安机关可以发布通缉令，采取有效措施，追捕归案。

**Article 155** If a criminal suspect who should be arrested is a fugitive, a public security organ may issue a wanted order and take effective measures to pursue him for arrest and bring him to justice. Public security organs at any level may directly issue wanted orders within the areas under their jurisdiction; they shall request a higher-level authority with the proper power to issue such orders for areas beyond their jurisdiction.

各级公安机关在自己管辖的地区以内，可以直接发布通缉令；超出自己管辖的地区，应当报请有权决定的上级机关发布。

## 第十节 侦查终结

## Section 10 Conclusion of Investigation

**第一百五十六条** 对犯罪嫌疑人逮捕后的侦查羁押期限不得超过二个月。案情复杂、期限届满不能终结的案件，可以经上一级人民检察院批准延长一个月。

**Article 156** The time limit for holding a criminal suspect in custody during investigation after arrest shall not exceed two months. If the case is complex and cannot be concluded within the time limit, an extension of one month may be allowed with the approval of the people's procuratorate at the next higher level.

**第一百五十七条** 因为特殊原因，在较长时间内不宜交付审判的

**Article 157** If, due to special reasons, it is not appropriate to hand over a particularly grave and complex case for trial even within a relatively long period of time, the Supreme People's

特别重大复杂的案件，由最高人民检察院报请全国人民代表大会常务委员会委员会批准延期审理。

**Procuratorate shall submit a report to the Standing Committee of the National People's Congress for approval of postponing the hearing of the case.**

**第一百五十八条** 下列案件在本法第一百五十六条规定的期限届满不能侦查终结的，经省、自治区、直辖市人民检察院批准或者决定，可以延长二个月：

**Article 158** With respect to the following cases, if investigation cannot be concluded within the time limit specified in Article 156 of this Law, an extension of two months may be allowed upon approval or decision by the people's procuratorate of a province, autonomous region or centrally-administered municipality: (1) Grave and complex cases in outlying areas where traffic is most inconvenient;

（一）交通十分不便的边远地区的重大复杂案件；

(2) Grave cases that involve criminal gangs;

（二）重大的犯罪集团案件；

(3) Grave and complex cases that involve people who commit crimes from one place to another; and

（三）流窜作案的重大复杂案件；

(4) Grave and complex cases that involve various quarters and for which it is difficult to obtain evidence.

（四）犯罪涉及面广，取证困难的重大复杂案件。

**第一百五十九条** 对犯罪嫌疑人可能判处十年有期徒刑以上刑罚，依照本法第一百五十八条规定延长期限届满，仍不能侦查终结的，经省、自治区、直辖市人民检察院批准或者决定，可以再延长二个月。

**Article 159** If in the case of a criminal suspect who may be sentenced to fixed-term imprisonment of 10 years at least, investigation of the case can still not be concluded upon expiration of the extended time limit as provided in Article 158 of this Law, another extension of two months may be allowed upon approval or decision by the people's procuratorate of a province, autonomous region or centrally-administered municipality.

**第一百六十条** 在侦查期间，发现犯罪嫌疑人另有重要罪行的，自发现之日起依照本法第一百五十六条的规定重新计算侦查羁押期限。

犯罪嫌疑人不讲真实姓名、住址，身份不明的，应当对其身份进行调查，侦查羁押期限自查清其身份之日起计算，但是不得停止对其犯罪行为的侦查取证。对于犯罪事实清楚，证据确实、充分，确实无法查明其身份的，也可以按其自报的姓名起诉、审判。

**第一百六十一条** 在案件侦查终结前，辩护律师提出要求的，侦查机关应当听取辩护律师的意见，并记录在案。辩护律师提出书面意见的，应当附卷。

**第一百六十二条** 公安机关侦查终结的案件，应当做到犯罪事实清楚，证据确实、充分，并且写出起诉意见书，连同案卷材料、证据一并移送同级人民检察院审查决

**Article 160** If, during the period of investigation, a criminal suspect is found to have committed other major crimes, the time limit for holding the criminal suspect in custody during investigation shall be recalculated, in accordance with the provisions of Article 156 of this Law, from the date on which such crimes are found. If a criminal suspect does not tell his true name and address and his identity is unknown, the time limit for holding him in custody during investigation shall be calculated from the date on which his identity is found out. However, before then, the investigation into his crime and obtaining of evidence shall not be ceased. If the facts of a crime are clear and the evidence is reliable and sufficient, the case may be prosecuted or tried by the name claimed by the criminal suspect himself.

**Article 161** Where, before the investigation of a case is closed, the defense lawyer files a request for presenting an opinion, the criminal investigation authority shall hear the opinion of the defense lawyer and record it. A written opinion of the defense lawyer, if any, shall be attached to the case file.

**Article 162** To close the investigation of a case, a public security organ shall ensure that the facts of a crime are clear and evidence is hard and sufficient, prepare a written prosecution opinion, which shall be transferred to the people's procuratorate at the same level for examination and decision along with the case file and evidence, and, at the same time, inform a criminal suspect and the defense lawyer thereof of the transfer. If the criminal suspect voluntarily pleads

定；同时将案件移送情况告知犯罪嫌疑人及其辩护律师。

guilty and accepts punishment, such information shall be recorded, archived, transferred with the case, and stated in the prosecution opinion.

犯罪嫌疑人自愿认罪的，应当记录在案，随案移送，并在起诉意见书中写明有关情况。

**第一百六十三条** 在侦查过程中，发现不应对犯罪嫌疑人追究刑事责任的，应当撤销案件；犯罪嫌疑人已被逮捕的，应当立即释放，发给释放证明，并且通知原批准逮捕的人民检察院。

**Article 163** Where it is discovered during investigation that a criminal suspect's criminal responsibility should not have been investigated, the case shall be dismissed; where the criminal suspect is under arrest, he shall be released immediately and issued a release certificate, and the people's procuratorate which originally approved the arrest shall be notified.

**第十一节 人民检察院对直接受理的案件的侦查**

**Section 11 Investigation of a Case Directly Accepted by a People's Public Procuratorate**

**第一百六十四条** 人民检察院对直接受理的案件的侦查适用本章规定。

**Article 164** Investigation of cases directly accepted by people's procuratorates shall be governed by the provisions of this Chapter.

**第一百六十五条** 人民检察院直接受理的案件中符合本法第八十一条、第八十二条第四项、第五项规定情形，需要逮捕、拘留犯罪嫌疑人的，由人民检察院作出决定，由公安机关执行。

**Article 165** If a case directly accepted by a people's procuratorate conforms with the conditions provided in Article 81 and in item (4) or item (5) of Article 82 of this Law, thus arrest or detention of the criminal suspect is necessitated, the decision thereon shall be made by the people's procuratorate and executed by a public security organ.

**第一百六十六条** 人民检察院

对直接受理的案件中被拘留的人，应当在拘留后的二十四小时以内进行讯问。在发现不应当拘留的时候，必须立即释放，发给释放证明。

**Article 166** A detainee in a case directly accepted by a people's procuratorate shall be interrogated within 24 hours after detention. If it is discovered that the person should not have been detained, the person must be immediately released, and a certificate of release shall be issued to the person.

**第一百六十七条** 人民检察院

对直接受理的案件中被拘留的人，认为需要逮捕的，应当在十四日以内作出决定。在特殊情况下，决定逮捕的时间可以延长一日至三日。对不需要逮捕的，应当立即释放；对需要继续侦查，并且符合取保候审、监视居住条件的，依法取保候审或者监视居住。

**Article 167** If a people's procuratorate deems it necessary to arrest a detainee in a case directly accepted by the people's procuratorate, it shall make a decision within 14 days after detention. Under special circumstances, the time limit for deciding an arrest may be extended by one to three days. If arrest is not necessary, the detainee shall be released immediately; or if further investigation is necessary and the detainee meets the conditions for being released upon bail pending trial or residential surveillance, the detainee shall be bailed or placed under residential surveillance in accordance with law.

**第一百六十八条** 人民检察院

侦查终结的案件，应当作出提起公诉、不起诉或者撤销案件的决定。

**Article 168** After a people's procuratorate has concluded its investigation of a case, it shall make a decision to initiate public prosecution, not to initiate a prosecution or to dismiss the case.

**第三章 提起公诉****Chapter III Initiation of a Public Prosecution****第一百六十九条** 凡需要提起

公诉的案件，一律由人民检察院审查决定。

**Article 169** All cases requiring initiation of a public prosecution shall be examined for decision by the people's procuratorates.

**第一百七十条** 人民检察院对于监察机关移送起诉的案件，依照本法和监察法的有关规定进行审查。人民检察院经审查，认为需要补充核实的，应当退回监察机关补充调查，必要时可以自行补充侦查。

对于监察机关移送起诉的已采取留置措施的案件，人民检察院应当对犯罪嫌疑人先行拘留，留置措施自动解除。人民检察院应当在拘留后的十日以内作出是否逮捕、取保候审或者监视居住的决定。在特殊情况下，决定的时间可以延长一日至四日。人民检察院决定采取强制措施期间不计入审查起诉期限。

**第一百七十一条** 人民检察院审查案件的时候，必须查明：

（一）犯罪事实、情节是否清楚，证据是否确实、充分，犯罪性质和罪名的认定是否正确；

（二）有无遗漏罪行和其他应

**Article 170** For a case transferred by the supervisory authorities for prosecution, the people's procuratorate shall examine such case in accordance with the relevant provisions of this Law and the Supervision Law. If the people's procuratorate, after examination, believes that supplementary verification is required, return the case to the original supervisory authorities for supplementary investigation, and may also supplement supplementary investigation by itself, if necessary. For a case subject to retention measures by the supervisory authorities, the people's procuratorate shall first detain the criminal suspect involved and then such measure will be automatically lifted. The people's procuratorate shall make a decision on whether to arrest, release on bail pending trial or surveil the residence within ten days of the detention. The time limit for such decision may be extended by one to four days under extraordinary circumstances, and the period during which the people's procuratorate decides to adopt coercive measures shall not be included in the period of examination for prosecution.

**Article 171** In examining a case, a people's procuratorate shall ascertain: (1) Whether the facts and circumstances of the crime are clear, whether the evidence is reliable and sufficient and whether the charge and the nature of the crime has been correctly determined;

(2) Whether there are any crimes that have been omitted or other persons whose criminal liability should be investigated;

(3) Whether it is a case in which criminal liability should not be

当追究刑事责任的人；

（三）是否属于不应追究刑事责任的；

（四）有无附带民事诉讼；

（五）侦查活动是否合法。

investigated;

(4) Whether the case has an incidental civil action; and

(5) Whether the investigation of the case is being lawfully conducted.

**第一百七十二条** 人民检察院对于监察机关、公安机关移送起诉的案件，应当在一个月以内作出决定，重大、复杂的案件，可以延长十五日；犯罪嫌疑人认罪认罚，符合速裁程序适用条件的，应当在十日以内作出决定，对可能判处的有期徒刑超过一年的，可以延长至十五日。

**Article 172** The people's procuratorate shall make a decision within one month for a case transferred by the supervisory authorities or the public security authorities for prosecution; an extension of a fifteen days is allowed for major and complicated cases. If the criminal suspect pleads guilty and accepts punishment, which meets the conditions for the application of expedited procedures, the people's procuratorate shall make such decision within ten days; for those that may involve fixed-term imprisonment of over one year, the said time limit may be extended to fifteen days. If jurisdiction over a case to be examined and prosecuted by a people's procuratorate is altered, the time limit for examination and prosecution shall be calculated from the date on which another people's procuratorate receives the case after the alteration.

人民检察院审查起诉的案件，改变管辖的，从改变后的人民检察院收到案件之日起计算审查起诉期限。

**第一百七十三条** 人民检察院审查案件，应当讯问犯罪嫌疑人，听取辩护人或者值班律师、被害人及其诉讼代理人的意见，并记录在

**Article 173** When examining a case, the people's procuratorate shall interrogate the criminal suspect and listen to the opinions of the defender or the duty lawyer, the victim and his/her agent ad litem, and record them in case files. Written opinions given by the defender or the duty lawyer, the victim and his/her agent ad litem shall be attached to the case



案。辩护人或者值班律师、被害人及其诉讼代理人提出书面意见的，应当附卷。

犯罪嫌疑人认罪认罚的，人民检察院应当告知其享有的诉讼权利和认罪认罚的法律规定，听取犯罪嫌疑人、辩护人或者值班律师、被害人及其诉讼代理人对下列事项的意见，并记录在案：

（一）涉嫌的犯罪事实、罪名及适用的法律规定；

（二）从轻、减轻或者免除处罚等从宽处罚的建议；

（三）认罪认罚后案件审理适用的程序；

（四）其他需要听取意见的事项。

人民检察院依照前两款规定听取值班律师意见的，应当提前为值班律师了解案件有关情况提供必要的便利。

**files.** If the criminal suspect pleads guilty and accepts punishment, the people's procuratorate shall inform him/her of his/her litigation rights and legal provisions on plea of guilty, and listen to the opinions of the criminal suspect, the defender or the duty lawyer, the victim and his/her agent ad litem on the following matters, and record such opinions in the case files:

(1) The corpus delicti , charged crimes and applicable legal provisions;

(2) Recommendations on lightened or mitigated punishment or exemption from punishment;

(3) Procedures applicable to trials after plea of guilty and punishment acceptance; and

(4) Other circumstances where opinions should be sought.

If the people's procuratorate seeks opinions from the duty lawyer in accordance with the provisions of the preceding two paragraphs, it shall provide the duty lawyer with necessary convenience for understanding the relevant circumstances of the case in advance.



**第一百七十四条 犯罪嫌疑人**

自愿认罪，同意量刑建议和程序适用的，应当在辩护人或者值班律师在场的情况下签署认罪认罚具结书。

犯罪嫌疑人认罪认罚，有下列情形之一的，不需要签署认罪认罚具结书：

（一）犯罪嫌疑人是盲、聋、哑人，或者是尚未完全丧失辨认或者控制自己行为能力的精神病人的；

（二）未成年犯罪嫌疑人的法定代理人、辩护人对未成年人认罪认罚有异议的；

（三）其他不需要签署认罪认罚具结书的情形。

**第一百七十五条 人民检察院**

审查案件，可以要求公安机关提供法庭审判所必需的证据材料；认为可能存在本法第五十六条规定的以非法方法收集证据情形的，可以要

**Article 174 Any criminal suspect who voluntarily pleads guilty, accepts punishment and agrees on the sentencing recommendation and applicable procedures shall sign an affidavit on plea of guilty and punishment acceptance in the presence of his/her defender or the duty lawyer.** Under any of the following circumstances, the criminal suspect does not need to sign an affidavit on plea of guilty and punishment acceptance:

(1) Where the criminal suspect is blind, deaf or dumb, or a mentally ill person who has not completely lost his/her identification ability or his/her ability to control his/her conduct;

(2) Where the agent ad litem or defender of a minor criminal suspect has an objection to the plea of guilt and punishment acceptance by the minor; or

(3) Other circumstances under which it is not necessary to sign the said affidavit."

**Article 175 When examining a case, a people's procuratorate may require a public security organ to provide evidence necessary for the trial of the case in court; and, if believing that any evidence may have been illegally collected as described in Article 56 of this Law, may require the public security organ to explain the legality of collection of evidence.** A people's procuratorate may remand the case to a public security organ for supplementary investigation or conduct

求其对证据收集的合法性作出说明。

人民检察院审查案件，对于需要补充侦查的，可以退回公安机关补充侦查，也可以自行侦查。

对于补充侦查的案件，应当在一个月以内补充侦查完毕。补充侦查以二次为限。补充侦查完毕移送人民检察院后，人民检察院重新计算审查起诉期限。

对于二次补充侦查的案件，人民检察院仍然认为证据不足，不符合起诉条件的，应当作出不予起诉的决定。

the investigation itself.

In cases where supplementary investigation is to be conducted, it shall be completed within one month. Supplementary investigation may be conducted twice at most. When supplementary investigation is completed and the case is transferred to the people's procuratorate, the time limit for examination and prosecution shall be recalculated by the people's procuratorate.

Where, after supplementary investigation has been conducted twice for a case, a people's procuratorate still deems that evidence is insufficient and the case does not meet the conditions for a prosecution, the people's procuratorate may decide not to initiate a prosecution.

**第一百七十六条** 人民检察院认为犯罪嫌疑人的犯罪事实已经查清，证据确实、充分，依法应当追究刑事责任的，应当作出起诉决定，按照审判管辖的规定，向人民法院提起公诉，并将案卷材料、证据移送人民法院。

犯罪嫌疑人认罪认罚的，人民

**Article 176** Where a people's procuratorate deems that the facts of a criminal suspect's crime are clear, that evidence is hard and sufficient, and that the criminal suspect shall be subject to criminal liability, it shall make a decision to initiate a prosecution; and, according to the provisions on trial jurisdiction, initiate a public prosecution in a People's Court and transfer the case file and evidence to the people's court. For a criminal suspect who pleads guilty and accepts punishment, the people's procuratorate may make sentencing recommendations on principal penalty, accessory penalty, whether the probation is applicable, etc. and transfer the affidavit for plea of guilty and punishment acceptance and other materials with the case at the same time.

检察院应当就主刑、附加刑、是否适用缓刑等提出量刑建议，并随案移送认罪认罚具结书等材料。

### 第一百七十七条 犯罪嫌疑人

没有犯罪事实，或者有本法第十六条规定的情形之一的，人民检察院应当作出不起诉决定。

对于犯罪情节轻微，依照刑法规定不需要判处刑罚或者免除刑罚的，人民检察院可以作出不起诉决定。

人民检察院决定不起诉的案件，应当同时对侦查中查封、扣押、冻结的财物解除查封、扣押、冻结。对被不起诉人需要给予行政处罚、处分或者需要没收其违法所得的，人民检察院应当提出检察意见，移送有关主管机关处理。有关主管机关应当将处理结果及时通知人民检察院。

### 第一百七十八条 不起诉的决定

应当公开宣布，并且将不起诉决定书送达被不起诉人和他的所在

**Article 177 Where a criminal suspect has no criminal facts or falls under any of the circumstances as set forth in Article 16 of this Law, a people's procuratorate shall make a decision not to initiate a prosecution.** With respect to a case that is minor and the offender need not be given criminal punishment or need be exempted from it according to the Criminal Law, the people's procuratorate may decide not to initiate a prosecution.

The people's procuratorate that decides not to prosecute shall simultaneously release the property sealed, seized or frozen in the investigation. If it is necessary to impose administrative penalty or sanctions against the person who is not prosecuted or have the said person's illegal gains confiscated, the people's procuratorate shall give its procuratorial opinions and transfer the case to the relevant competent authorities for handling. The relevant competent authorities shall promptly notify the people's procuratorate of the handling result.

**Article 178 A decision not to initiate a prosecution shall be announced publicly, and the decision shall, in written form, be served on the person who is not to be prosecuted and his employer. If the said person is in custody, he shall be**

单位。如果被不起诉人在押，应当立即释放。

**released immediately.**

**第一百七十九条** 对于公安机关移送起诉的案件，人民检察院决定不起诉的，应当将不起诉决定书送达公安机关。公安机关认为不起诉的决定有错误的时候，可以要求复议，如果意见不被接受，可以向上一级人民检察院提请复核。

**Article 179** With respect to a case transferred by a public security organ for prosecution, if the people's procuratorate decides not to initiate a prosecution, it shall serve the decision in writing on the public security organ. If the public security organ considers that the decision not to initiate a prosecution is wrong, it may demand reconsideration, and if the demand is rejected, it may submit the matter to the people's procuratorate at the next higher level for review.

**第一百八十条** 对于有被害人的案件，决定不起诉的，人民检察院应当将不起诉决定书送达被害人。被害人如果不服，可以自收到决定书后七日以内向上一级人民检察院申诉，请求提起公诉。人民检察院应当将复查决定告知被害人。对人民检察院维持不起诉决定的，被害人可以向人民法院起诉。被害人也可以不经申诉，直接向人民法院起诉。人民法院受理案件后，人民检察院应当将有关案件材料移送人民法院。

**Article 180** If the people's procuratorate decides not to initiate a prosecution with respect to a case that involves a victim, it shall serve the decision in writing on the victim. If the victim refuses to accept the decision, he may, within seven days after receiving the written decision, present a petition to the people's procuratorate at the next higher level and request the latter to initiate a public prosecution. The people's procuratorate shall notify the victim of its decision made after reexamination. If the people's procuratorate upholds the decision not to initiate a prosecution, the victim may bring a lawsuit in a People's Court. The victim may also bring a lawsuit directly in a people's court without presenting a petition first. After the people's court has accepted the case, the people's procuratorate shall transfer the relevant case file to the people's court.

**第一百八十一条** 对于人民检

**Article 181** If the person against whom a people's procuratorate decides, in accordance with the provisions of

检察院依照本法第一百七十七条第二款规定作出的不起诉决定，被不起诉人如果不服，可以自收到决定书后七日以内向人民检察院申诉。人民检察院应当作出复查决定，通知被不起诉的人，同时抄送公安机关。

**the second paragraph of Article 177 of this Law, not to initiate a prosecution still refuses to accept the decision, he may present a petition to the people's procuratorate within seven days after receiving the written decision. The people's procuratorate shall make a decision to conduct a reexamination, notify the person against whom no prosecution is to be initiated and at the same time send a copy of the decision to the public security organ.**

**第一百八十二条** 犯罪嫌疑人自愿如实供述涉嫌犯罪的事实，有重大立功或者案件涉及国家重大利益的，经最高人民检察院核准，公安机关可以撤销案件，人民检察院可以作出不予起诉决定，也可以对涉嫌数罪中的一项或者多项不予起诉。

**Article 182** Where a criminal suspect confesses the fact of a suspected crime voluntarily and truthfully, there is a major meritorious service or the case involves major State interests, upon examination and approval by the Supreme People's Procuratorate, the public security authorities may withdraw the case, or may decide not to institute a prosecution, or may not institute a prosecute for one or more alleged offenses. Where a case is not prosecuted or is withdrawn in accordance with the provisions of the preceding paragraph, the people's procuratorate and the public security authorities shall promptly handle the property sealed, seized or frozen as well as the fruits thereof.

根据前款规定不予起诉或者撤销案件的，人民检察院、公安机关应当及时对查封、扣押、冻结的财物及其孳息作出处理。

### 第三编 审判

### Part III Trial

#### 第一章 审判组织

#### Chapter I Trial Organisations

**第一百八十三条** 基层人民法院、中级人民法院审判第一审案

**Article 183** The trial of a first-instance case by a primary people's court or an intermediate people's court shall be conducted by a collegiate panel composed of three judges or of a total of three or seven judges and people's jurors.

件，应当由审判员三人或者由审判员和人民陪审员共三人或者七人组成合议庭进行，但是基层人民法院适用简易程序、速裁程序的案件可以由审判员一人独任审判。

高级人民法院审判第一审案件，应当由审判员三人至七人或者由审判员和人民陪审员共三人或者七人组成合议庭进行。

最高人民法院审判第一审案件，应当由审判员三人至七人组成合议庭进行。

人民法院审判上诉和抗诉案件，由审判员三人或者五人组成合议庭进行。

合议庭的成员人数应当是单数。

**第一百八十四条** 合议庭进行评议的时候，如果意见分歧，应当按多数人的意见作出决定，但是少数人的意见应当写入笔录。评议笔录由合议庭的组成人员签名。

**However, the trial of a case to which summary procedures or expedited procedures apply by a primary people's court may be tried by a single judge alone. .** The trial of a first-instance case by the high people's court shall be conducted by a collegiate panel composed of three to seven judges or of a total of three or seven judges and people's jurors.

The trial of a first-instance case by the Supreme People's Court shall be conducted by a collegial panel composed of three to seven judges.

The trial of an appeal or protest by a people's court shall be conducted by a collegial panel composed of three or five judges.

The member of a collegiate panel shall be odd in number.

**Article 184** If opinions differ when a collegial panel conducts its deliberations, a decision shall be made in accordance with the opinions of the majority, but the opinions of the minority shall be entered in the records. The records of the deliberations shall be signed by the members of the collegial panel.

**第一百八十五条** 合议庭开庭

审理并且评议后，应当作出判决。对于疑难、复杂、重大的案件，合议庭认为难以作出决定的，由合议庭提请院长决定提交审判委员会讨论决定。审判委员会的决定，合议庭应当执行。

**Article 185** After the hearings and deliberations, the collegial panel shall render a judgment. With respect to a difficult, complex or major case, on which the collegial panel considers it difficult to make a decision, the collegial panel shall refer the case to the president of the court for him to decide whether to submit the case to the judicial committee for discussion and decision. The collegial panel shall execute the decision of the judicial committee.

**第二章 第一审程序****Chapter II Procedures of First Instance****第一节 公诉案件****Section 1 Cases of Public Prosecution**

**第一百八十六条** 人民法院对提起公诉的案件进行审查后，对于起诉书中明确的指控犯罪事实的，应当决定开庭审判。

**Article 186** After examining a public prosecution initiated, a people's court shall decide to hold a court session to hear the case if the charges in the indictment are based on clear facts.

**第一百八十七条** 人民法院决

定开庭审判后，应当确定合议庭的组成人员，将人民检察院的起诉书副本至迟在开庭十日以前送达被告人及其辩护人。

**Article 187** After deciding to hold a court session to hear a case, a people's court shall determine the members of the collegial panel and serve a copy of the indictment of the people's procuratorate upon the defendant and the defender thereof no later than ten days before the court session is opened. Before a court session is opened, the judges may call together the public prosecutor, parties concerned, defenders, and agents ad litem to gather information and hear opinions on trial-related issues, such as challenges, a list of witnesses to testify in court, and exclusion of illegally obtained evidence.

在开庭以前，审判人员可以召集公诉人、当事人和辩护人、诉讼代理人，对回避、出庭证人名单、非法证据排除等与审判相关的问题

After determining the opening date of a court session, a people's court shall notify the people's procuratorate of the opening time and place of the court session, summon the parties concerned, notify the defenders, agents ad litem, witnesses, identification or



题，了解情况，听取意见。

人民法院确定开庭日期后，应当将开庭的时间、地点通知人民检察院，传唤当事人，通知辩护人、诉讼代理人、证人、鉴定人和翻译人员，传票和通知书至迟在开庭三日以前送达。公开审判的案件，应当在开庭三日以前先期公布案由、被告人姓名、开庭时间和地点。

上述活动情形应当写入笔录，由审判人员和书记员签名。

evaluation experts, and interpreters, and serve the summons and notices no later than three days before the court session is opened. If a case is to be heard openly, the cause of action, the name of the defendant, and the opening time and place of the court session shall be announced no later than three days before the court session is opened.

The above proceedings shall be recorded in the transcripts, which shall be signed by the judges and court clerk.

**第一百八十八条** 人民法院审判第一审案件应当公开进行。但是有关国家秘密或者个人隐私的案件，不公开审理；涉及商业秘密的案件，当事人申请不公开审理的，可以不公开审理。

不公开审理的案件，应当当庭宣布不公开审理的理由。

**Article 188** A people's court of first instance shall hear cases openly. However, a case involving any state secret or personal privacy shall not be heard in open court; and a case involving any trade secret may be heard in camera if the party concerned files such a request. The reasons for hearing a case in camera shall be announced in court.

**第一百八十九条** 人民法院审判公诉案件，人民检察院应当派员出席法庭支持公诉。

**Article 189** When a case of public prosecution is heard by a people's court, the people's procuratorate shall send procurators to appear before court to support the public prosecution.



**第一百九十条** 开庭的时候，审判长查明当事人是否到庭，宣布案由；宣布合议庭的组成人员、书记员、公诉人、辩护人、诉讼代理人、鉴定人和翻译人员的名单；告知当事人有权对合议庭组成人员、书记员、公诉人、鉴定人和翻译人员申请回避；告知被告人享有辩护权利。

被告人认罪认罚的，审判长应当告知被告人享有的诉讼权利和认罪认罚的法律规定，审查认罪认罚的自愿性和认罪认罚具结书内容的真实性、合法性。

**第一百九十一条** 公诉人在法庭上宣读起诉书后，被告人、被害人可以就起诉书指控的犯罪进行陈述，公诉人可以讯问被告人。

被害人、附带民事诉讼的原告人和辩护人、诉讼代理人，经审判长许可，可以向被告人发问。

审判人员可以讯问被告人。

**Article 190** When a court session opens, the presiding judge shall ascertain if all the parties have appeared in court and announce the cause of action. He shall announce the roll, naming the members of the collegial panel, the court clerk, the public prosecutor, the defender, agent ad litem, the expert witnesses and the interpreter; he shall inform the parties of their right to apply for challenge against any member of the collegial panel, the court clerk, the public prosecutor, any expert witnesses or the interpreter; and he shall inform the defendant of his right to defence. Where the defendant pleads guilty and accepts punishment, the chief judge shall inform the defendant of his/her litigation right and legal provisions on plea of guilty and punishment acceptance, and examine the voluntariness of his/her plea of guilty and punishment acceptance as well as the authenticity and legitimacy of the contents of the affidavit on plea of guilty and punishment acceptance.

**Article 191** After the public prosecutor has read out the bill of prosecution in court, the defendant and the victim may present statements regarding the crime accused in the bill of prosecution, and the public prosecutor may interrogate the defendant. The victim, the plaintiff and defender in an incidental civil action and the agents ad litem may, with the permission of the presiding judge, put questions to the defendant.

The judges may interrogate the defendant.

**第一百九十二条** 公诉人、当事人或者辩护人、诉讼代理人对证人证言有异议，且该证人证言对案件定罪量刑有重大影响，人民法院认为证人有必要出庭作证的，证人应当出庭作证。

人民警察就其执行职务时目击的犯罪情况作为证人出庭作证，适用前款规定。

公诉人、当事人或者辩护人、诉讼代理人对鉴定意见有异议，人民法院认为鉴定人有必要出庭的，鉴定人应当出庭作证。经人民法院通知，鉴定人拒不出庭作证的，鉴定意见不得作为定案的根据。

**第一百九十三条** 经人民法院通知，证人没有正当理由不出庭作证的，人民法院可以强制其到庭，但是被告人的配偶、父母、子女除外。

证人没有正当理由拒绝出庭或者出庭后拒绝作证的，予以训诫，情节严重的，经院长批准，处以十

**Article 192** Where the public prosecutor or a party concerned or the defender or agent ad litem thereof raises any objection to a witness statement which has a material impact on the conviction and sentencing of a case, the witness shall testify before court if the people's court deems it necessary. Where a people's police officer testifies before court regarding a crime witnessed in line of duty, the preceding paragraph shall apply.

Where the public prosecutor or a party concerned or the defender or agent ad litem thereof raises any objection to an expert opinion, the identification or evaluation expert shall testify before court if the people's court deems it necessary. If the identification or evaluation expert refuses to do so after being notified by the people's court, the expert opinion may not be used as a basis for deciding the case.

**Article 193** Where, after being notified by a people's court, a witness refuses to testify before court without justifiable reasons, the people's court may force the witness to appear before court, unless the witness is the spouse, a parent, or a child of the defendant. A witness who refuses to appear before court or refuses to testify after appearing before court without justifiable reasons shall be admonished; and if the circumstances are serious, with the approval of the president of the people's court, the witness may be detained for not more than 10 days. Against the detention decision, the detainee may apply to the people's court at the next higher level for reconsideration. Execution of the detention decision shall not be suspended

日以下的拘留。被处罚人对拘留决定不服的，可以向上一级人民法院申请复议。复议期间不停止执行。

pending reconsideration.

**第一百九十四条** 证人作证，审判人员应当告知他要如实地提供证言和有意作伪证或者隐匿罪证要负的法律后果。公诉人、当事人和辩护人、诉讼代理人经审判长许可，可以对证人、鉴定人发问。审判长认为发问的内容与案件无关的时候，应当制止。

**Article 194** Before a witness gives testimony, the judges shall instruct him to give testimony truthfully and explain to him the legal liability that shall be incurred for intentionally giving false testimony or concealing criminal evidence. The public prosecutor, the parties, the defenders and agents ad litem, with the permission of the presiding judge, may question the witnesses and expert witnesses. If the presiding judge considers any questioning irrelevant to the case, he shall put a stop to it. The judges may question the witnesses and expert witnesses.

审判人员可以询问证人、鉴定人。

**第一百九十五条** 公诉人、辩护人应当向法庭出示物证，让当事人辨认，对未到庭的证人的证言笔录、鉴定人的鉴定意见、勘验笔录和其他作为证据的文书，应当当庭宣读。审判人员应当听取公诉人、当事人和辩护人、诉讼代理人的意见。

**Article 195** The public prosecutor and the defenders shall show the material evidence to the court for the parties to identify; the records of testimony of witnesses who are not present in court, the conclusions of expert witnesses who are not present in court, the records of inquests and other documents serving as evidence shall be read out in court. The judges shall heed the opinions of the public prosecutor, the parties, the defenders and the agents ad litem.

**第一百九十六条** 法庭审理过程中，合议庭对证据有疑问的，可

**Article 196** During a court hearing, if the collegial panel has doubts about the evidence, it may announce an adjournment, in order to carry out investigation to verify the evidence. When

以宣布休庭，对证据进行调查核实。

carrying out investigation to verify evidence, the people's court may conduct inquest, examination, seizure, impoundment, expert evaluation, as well as inquiry and freeze.

人民法院调查核实证据，可以进行勘验、检查、查封、扣押、鉴定和查询、冻结。

**第一百九十七条** 法庭审理过程中，当事人和辩护人、诉讼代理人有权申请通知新的证人到庭，调取新的物证，申请重新鉴定或者勘验。

公诉人、当事人和辩护人、诉讼代理人可以申请法庭通知有专门知识的人出庭，就鉴定人作出的鉴定意见提出意见。

法庭对于上述申请，应当作出是否同意的决定。

**第二款** 规定的有专门知识的人出庭，适用鉴定人的有关规定。

**第一百九十八条** 法庭审理过程中，对与定罪、量刑有关的事实、证据都应当进行调查、辩论。

**Article 197** During a court hearing, the parties, the defenders and agents ad litem shall have the right to request new witnesses to be summoned, new material evidence to be obtained, a new expert evaluation to be made, and another inquest to be held. The public prosecutor or a party concerned or the defender or agent ad litem thereof may request the court to call a person with expertise to appear before court to offer an opinion on the expert opinion of an identification or evaluation expert.

The court shall make a decision whether to grant the above-mentioned requests.

Where a person with expertise appears before court under paragraph 2 hereof, the relevant provisions on identification or evaluation experts shall apply.

**Article 198** In a court session, any fact or evidence related to conviction or sentencing shall be investigated and debated. With the permission of the presiding judge, the public prosecutor or a party concerned or the defender or agent ad litem thereof may present opinions on the evidence and merits of a case

经审判长许可，公诉人、当事人和辩护人、诉讼代理人可以对证据和案件情况发表意见并且可以互相辩论。

审判长在宣布辩论终结后，被告人有最后陈述的权利。

**第一百九十九条** 在法庭审判过程中，如果诉讼参与人或者旁听人员违反法庭秩序，审判长应当警告制止。对不听制止的，可以强行带出法庭；情节严重的，处以一千元以下的罚款或者十五日以下的拘留。罚款、拘留必须经院长批准。被处罚人对罚款、拘留的决定不服的，可以向上一级人民法院申请复议。复议期间不停止执行。

对聚众哄闹、冲击法庭或者侮辱、诽谤、威胁、殴打司法工作人员或者诉讼参与人，严重扰乱法庭秩序，构成犯罪的，依法追究刑事责任。

**第二百条** 在被告人最后陈述后，审判长宣布休庭，合议庭进行

and debate with opposing parties.

After the presiding judge declares an end of debate, the defendant shall have the right to present a final statement.

**Article 199** If any participant in the proceedings of a trial or by-stander violates the order of the courtroom, the presiding judge shall warn him to desist. If any person fails to obey, he may forcibly be taken out of the courtroom. If the violation is serious, the person shall be fined not more than 1,000 yuan or detained not more than 15 days. The fine or detention shall be subject to approval of the president of the court. If the person under punishment is not satisfied with the decision on the fine or detention, he may apply to the People's Court at the next higher level for reconsideration. However, the execution of the fine or detention shall not be suspended during the period of reconsideration. Whoever assembles a crowd to make an uproar or charges into the courtroom, or humiliates, slanders, intimidates or beats up judicial officers or participants in the proceedings, thereby seriously disturbing the order of the courtroom, which constitutes a crime, shall be investigated for criminal liability according to law.

**Article 200** After a defendant makes his final statement, the presiding judge shall announce an adjournment and the collegial panel shall conduct its deliberations and, on the

评议，根据已经查明的事实、证据和有关的法律规定，分别作出以下判决：

（一）案件事实清楚，证据确实、充分，依据法律认定被告人有罪的，应当作出有罪判决；

（二）依据法律认定被告人无罪的，应当作出无罪判决；

（三）证据不足，不能认定被告人有罪的，应当作出证据不足、指控的犯罪不能成立的无罪判决。

**basis of the established facts and evidence and in accordance with the provisions of relevant laws, render one of the**

**following judgments:** (1) If the facts of a case are clear, the evidence is reliable and sufficient, and the defendant is found guilty in accordance with law, he shall be pronounced guilty accordingly;

(2) If the defendant is found innocent in accordance with law, he shall be pronounced innocent accordingly;

(3) If the evidence is insufficient and thus the defendant cannot be found guilty, he shall be pronounced innocent accordingly on account of the fact that the evidence is insufficient and the accusation unfounded.

**第二百零一条** 对于认罪认罚案件，人民法院依法作出判决时，一般应当采纳人民检察院指控的罪名和量刑建议，但有下列情形之一的除外：

（一）被告人的行为不构成犯罪或者不应当追究其刑事责任的；

（二）被告人违背意愿认罪认罚的；

（三）被告人否认指控的犯罪

**Article 201** When rendering an judgement for a case of plea of guilty and punishment acceptance, the people's court shall generally adopt the offence charged and sentencing recommendations proposed by the people's procuratorate in accordance with law, except for the following

**circumstances:** (1) where the defendant's conduct does not constitute a crime or shall not be subject to criminal liability;

(2) where the defendant pleads guilty and accepts punishment against his/her wills;

(3) where defendant denies the corpus delicti charged;

(4) where the offence charged in the prosecution is inconsistent with those found in the trial; or

(5) other circumstances that may affect the impartial trial of the case.

事实的；

（四）起诉指控的罪名与审理认定的罪名不一致的；

（五）其他可能影响公正审判的情形。

人民法院经审理认为量刑建议明显不当，或者被告人、辩护人对量刑建议提出异议的，人民检察院可以调整量刑建议。人民检察院不调整量刑建议或者调整量刑建议后仍然明显不当的，人民法院应当依法作出判决。

Where the people's court believes that the sentencing recommendation is obviously improper, or where the defendant or the defender raises an objection to the sentencing recommendation, the people's procuratorate may adjust the sentencing recommendation. If the people's procuratorate fails to adjust the sentencing recommendation or it is still obviously improper after adjustment, the people's court shall render a judgment in accordance with the law.

**第二百零二条** 宣告判决，一律公开进行。

当庭宣告判决的，应当在五日以内将判决书送达当事人和提起公诉的人民检察院；定期宣告判决的，应当在宣告后立即将判决书送达当事人和提起公诉的人民检察院。判决书应当同时送达辩护人、诉讼代理人。

**Article 202** In all cases, judgments shall be pronounced publicly. Where a sentence is announced at the end of a court session, a written sentence shall be served within five days upon the parties concerned and the people's procuratorate that initiated the public prosecution; or, if the announcement of a sentence is scheduled for a later date, a written sentence shall be served immediately after announcement upon the parties concerned and the people's procuratorate that indicated the public prosecution. At the same time, a written sentence shall be served upon a defender and an agent ad litem.

**第二百零三条** 判决书应当由

**Article 203** A written sentence shall be signed by the judges



审判人员和书记员署名，并且写明上诉的期限和上诉的法院。

**and court clerk and indicate the time limit for appeal and name of the appellate court.**

**第二百零四条** 在法庭审判过程中，遇有下列情形之一的，影响审判进行的，可以延期审理：

**Article 204 A hearing may be postponed if during a trial one of the following situations affecting the conduct of the trial occurs:** (1) If it is necessary to summon new witnesses, obtain new material evidence, make a new expert evaluation or hold another inquest;

（一）需要通知新的证人到庭，调取新的物证，重新鉴定或者勘验的；

(2) If the procurators find that a case for which public prosecution has been initiated requires supplementary investigation, and they make a proposal to that effect; or

(3) if the trial cannot proceed for a request for challenge.

（二）检察人员发现提起公诉的案件需要补充侦查，提出建议的；

（三）由于申请回避而不能进行审判的。

**第二百零五条** 依照本法第二百零四条第二项的规定延期审理的案件，人民检察院应当在一个月以内补充侦查完毕。

**Article 205 If the hearings of a case is postponed in accordance with the provisions of item (2) of Article 204 of this Law, the people's procuratorate shall complete the supplementary investigation within one month.**

**第二百零六条** 在审判过程中，有下列情形之一的，致使案件在较长时间内无法继续审理的，可以中止审理：

**Article 206 Where any of the following circumstances occurs during the trial of a case, which makes the trial impossible for a relatively long period of time, the trial may be suspended:** (1) the defendant is unable to appear before court for suffering a serious illness;

(2) the defendant has escaped;



（一）被告人患有严重疾病，无法出庭的；

(3) the private prosecutor is unable to appear before court for suffering a serious illness and has not retained an agent ad litem to appear before court; or

（二）被告人脱逃的；

(4) there is any irresistible reason.

（三）自诉人患有严重疾病，无法出庭，未委托诉讼代理人出庭的；

After the cause of suspension of a trial disappears, the trial shall be resumed. The time of suspension of a trial shall not be counted in the period of trial.

（四）由于不能抗拒的原因。

中止审理的原因消失后，应当恢复审理。中止审理的期间不计入审理期限。

**第二百零七条** 法庭审判的全部活动，应当由书记员写成笔录，经审判长审阅后，由审判长和书记员签名。

**Article 207** The court clerk shall make a written record of the entire court proceedings, which shall be examined by the presiding judge and then signed by him and the court clerk. That portion of the courtroom record comprising the testimony of witnesses shall be read out in court or given to the witnesses to read. After the witnesses acknowledge that the record is free of error, they shall sign or affix their seals to it.

法庭笔录中的证人证言部分，应当当庭宣读或者交给证人阅读。证人在承认没有错误后，应当签名或者盖章。

The courtroom record shall be given to the parties to read or shall be read out to them. If a party considers that there are omissions or errors in the record, he may request additions or corrections to be made. After the parties acknowledge that the record is free of error, they shall sign or affix their seals to it.

法庭笔录应当交给当事人阅读或者向他宣读。当事人认为记载有遗漏或者差错的，可以请求补充或

者改正。当事人承认没有错误后，应当签名或者盖章。

**第二百零八条** 人民法院审理公诉案件，应当在受理后二个月以内宣判，至迟不得超过三个月。对于可能判处死刑的案件或者附带民事诉讼的案件，以及有本法第一百五十八条规定情形之一的，经上一级人民法院批准，可以延长三个月；因特殊情况还需要延长的，报请最高人民法院批准。

人民法院改变管辖的案件，从改变后的人民法院收到案件之日起计算审理期限。

人民检察院补充侦查的案件，补充侦查完毕移送人民法院后，人民法院重新计算审理期限。

**第二百零九条** 人民检察院发现人民法院审理案件违反法律规定的诉讼程序，有权向人民法院提出纠正意见。

**Article 208** A people's court shall announce a sentence for a case of public prosecution within two months, or three months at the latest, after accepting the case. For a case with the possibility of a death penalty or a case with an incidental civil action or under any of the circumstances as set forth in Article 158 of this Law, the period of trial may be extended for three months with the approval of the people's court at the next higher level; and, if more extension is needed under special circumstances, the extension shall be reported to the Supreme People's Court for approval. If jurisdiction of a people's court over a case is altered, the time limit for handling the case shall be calculated from the date on which another People's Court receives the case after the alteration.

As to a case for which a people's procuratorate has to conduct supplementary investigation, the people's court shall start to calculate anew the time limit for handling the case after the supplementary investigation has been completed and the case has been transferred to it.

**Article 209** If a people's procuratorate discovers that in handling a case a People's Court has violated the litigation procedure prescribed by law, it shall have the power to suggest to the people's court that it should set it right.

## 第二节 自诉案件

## Section 2 Cases of Private Prosecution

**第二百一十条** 自诉案件包括

下列案件：

（一）告诉才处理的案件；

（二）被害人有证据证明的轻微刑事案件；

（三）被害人有证据证明对被告人侵犯自己人身、财产权利的行为应当依法追究刑事责任，而公安机关或者人民检察院不予追究被告人刑事责任的案件。

**Article 210 Cases of private prosecution include the**

**following:** (1) Cases to be handled only upon complaint;

(2) Cases for which the victims have evidence to prove that those are minor criminal cases; and

(3) Cases for which the victims have evidence to prove that the defendants should be investigated for criminal liability according to law because their acts have infringed upon the victims' personal or property rights, whereas, the public security organs or the people's procuratorates do not investigate the criminal liability of the accused.

**第二百一十一条** 人民法院对

于自诉案件进行审查后，按照下列情形分别处理：

（一）犯罪事实清楚，有足够证据的案件，应当开庭审判；

（二）缺乏罪证的自诉案件，如果自诉人提不出补充证据，应当说服自诉人撤回自诉，或者裁定驳回。

自诉人经两次依法传唤，无正当理由拒不到庭的，或者未经法庭

**Article 211 After examining a case of private prosecution, the people's court shall handle it in one of the following manners**

**in light of the different situations:** (1) If the facts of the crime are clear and the evidence is sufficient, the case shall be tried at a court session; or

(2) In a case of private prosecution for which criminal evidence is lacking, if the private prosecutor cannot present supplementary evidence, the court shall persuade him to withdraw his prosecution or order its rejection.

If a private prosecutor, having been served twice with a summons according to law, refuses to appear in court without justifiable reasons, or if he withdraws from a court session without permission of the court, the case may be considered withdrawn by him.

If during the trial of a case the judges have doubts about the evidence and consider it necessary to conduct investigation to verify the evidence, the provisions of Article 196 of this Law shall

许可中途退庭的，按撤诉处理。

apply.

法庭审理过程中，审判人员对  
证据有疑问，需要调查核实的，适  
用本法第一百九十六条的规定。

**第二百一十二条** 人民法院对  
自诉案件，可以进行调解；自诉人  
在宣告判决前，可以同被告人自行  
和解或者撤回自诉。本法第二百一  
十条第三项规定的案件不适用调  
解。

人民法院审理自诉案件的期  
限，被告人被羁押的，适用本法第  
二百零八条第一款、第二款的规定；  
未被羁押的，应当在受理后六  
个月以内宣判。

**Article 212** A people's court may conduct mediation in a case of private prosecution; and the private prosecutor may voluntarily reach a settlement with the defendant or withdraw the private prosecution before a sentence is announced. Mediation shall not apply to a case as described in item (3), Article 210 of this Law. The period for a people's court to try a case of private prosecution shall be governed by paragraph 1 or 2, Article 208 of this Law if the defendant is in custody; or a sentence shall be announced within six months after the case is accepted if the defendant is not in custody.

**第二百一十三条** 自诉案件的  
被告人在诉讼过程中，可以对自诉  
人提起反诉。反诉适用自诉的规  
定。

**Article 213** In the process of the proceedings, the defendant in a case of private prosecution may raise a counterclaim against the private prosecutor. The provisions governing private prosecutions shall apply to counterclaims.

### 第三节 简易程序

### Section 3 Summary Procedures

**第二百一十四条** 基层人民法  
院管辖的案件，符合下列条件的，

**Article 214** A case under the jurisdiction of a basic-level people's court may be heard under summary procedures, if the following conditions are met: (1) the facts of a case are

可以适用简易程序审判：

clear and evidence is sufficient;

（一）案件事实清楚、证据充

(2) the defendant confesses his/her crime and raises no objection to the charges; and

分的；

(3) the defendant raises no objection to the application of summary procedures.

（二）被告人承认自己所犯罪

行，对指控的犯罪事实没有异议的；

When initiating a public prosecution, a people's procuratorate may suggest that the People's Court apply summary procedures.

（三）被告人对适用简易程序

没有异议的。

人民检察院在提起公诉的时候，可以建议人民法院适用简易程序。

## 第二百一十五条 有下列情形之一的，不适用简易程序：

（一）被告人是盲、聋、哑人，或者是尚未完全丧失辨认或者控制自己行为能力的精神病人的；

**Article 215 Under any of the following circumstances, summary procedures shall not apply:** (1) the defendant suffers vision, hearing, or speech impairment or is a mental patient who has not completely lost the ability to recognize or control his/her behavior;

（二）有重大社会影响的；

(2) the case has a significant social impact;

（三）共同犯罪案件中部分被告人不认罪或者对适用简易程序有异议的；

(3) in a joint crime, some defendant pleads not guilty or raises an objection to the application of summary procedures; or

(4) the application of summary procedures is otherwise inappropriate.

（四）其他不宜适用简易程序  
审理的。

**第二百一十六条** 适用简易程序审理案件，对可能判处三年有期徒刑以下刑罚的，可以组成合议庭进行审判，也可以由审判员一人独任审判；对可能判处的有期徒刑超过三年的，应当组成合议庭进行审判。

适用简易程序审理公诉案件，  
人民检察院应当派员出席法庭。

**第二百一十七条** 适用简易程序审理案件，审判人员应当询问被告人对指控的犯罪事实的意见，告知被告人适用简易程序审理的法律规定，确认被告人是否同意适用简易程序审理。

**第二百一十八条** 适用简易程序审理案件，经审判人员许可，被告人及其辩护人可以同公诉人、自诉人及其诉讼代理人互相辩论。

**第二百一十九条** 适用简易程序

**Article 216** In a case under summary procedures, if the defendant may be sentenced to a fixed-term imprisonment of three years or a lighter punishment, the case may be tried by a collegial panel or a sole judge; and if the defendant may be sentenced to a fixed-term imprisonment of more than three years, a collegial panel must be formed to try the case. For a case of public prosecution under summary procedures, the people's procuratorate shall send procurators to appear before court.

**Article 217** When trying a case under summary procedures, a judge shall ask for the defendant's opinion on the charges, inform the defendant of the legal provisions on application of summary procedures, and confirm whether the defendant agrees on the application of summary procedures.

**Article 218** In a case under summary procedures, the defendant and his/her defender may, with the permission of a judge, debate with the public prosecutor or private prosecutor and his/her agent ad litem.

**Article 219** The trial of a case under summary procedures shall not be subject to the provisions of Section I of this

序审理案件，不受本章第一节关于送达期限、讯问被告人、询问证人、鉴定人、出示证据、法庭辩论程序规定的限制。但在判决宣告前应当听取被告人的最后陈述意见。

**第二百二十条** 适用简易程序审理案件，人民法院应当在受理后二十日以内审结；对可能判处的有期徒刑超过三年的，可以延长至一个半月。

**第二百二十一条** 人民法院在审理过程中，发现不宜适用简易程序的，应当按照本章第一节或者第二节的规定重新审理。

#### 第四节 速裁程序

**第二百二十二条** 基层人民法院管辖的可能判处三年有期徒刑以下刑罚的案件，案件事实清楚，证据确实、充分，被告人认罪认罚并同意适用速裁程序的，可以适用速裁程序，由审判员一人独任审判。

人民检察院在提起公诉的时

**Chapter regarding the time limit for service of process and the procedures for questioning the defendant, witnesses, and identification or evaluation experts, adducing evidence, and debating in court. However, before a sentence is announced, the final statement of the defendant shall be heard.**

**Article 220** For a case under summary procedures, a people's court shall close the case within 20 days after accepting it; or, if the defendant may be sentenced to a fixed-term imprisonment of more than three years, the above period may be extended to one and a half months.

**Article 221** If in the course of trying a case a people's court discovers that summary procedures are not appropriate for the case, it shall try it anew in accordance with the provisions in Section I or Section II of this Chapter.

#### Section 4 Expedited Procedures

**Article 222** For a case under the jurisdiction of a primary people's court that may be sentenced to a fixed-term imprisonment of not more than three years, if the facts of the case are clear and the evidence is true and sufficient, and the defendant pleads guilty and agrees to the application of the expedited procedures, the expedited procedures may apply, and such case shall be tried solely by one judge. The people's procuratorate instituting a public prosecution may recommend the people's court to apply the expedited procedures.

候，可以建议人民法院适用速裁程序。

**第二百二十三条** 有下列情形之一的，不适用速裁程序：

（一）被告人是盲、聋、哑人，或者是尚未完全丧失辨认或者控制自己行为能力的精神病人的；

（二）被告人是未成年人的；  
（三）案件有重大社会影响的；

（四）共同犯罪案件中部分被告人对指控的犯罪事实、罪名、量刑建议或者适用速裁程序有异议的；

（五）被告人与被害人或者其法定代理人没有就附带民事诉讼赔偿等事项达成调解或者和解协议的；

（六）其他不宜适用速裁程序审理的。

**Article 223 Under any of the following circumstances, the**

**expedited procedures shall not apply:** (1) where the defendant is blind, deaf or dumb, or a mentally ill person who has not completely lost identification ability or the ability to control his/her conduct;

(2) where the defendant is a minor;

(3) where the case has a major social impact;

(4) Some defendants in a joint criminal offence have objections to the corpus delicti, charged, sentencing recommendations or the application of expedited procedures;

(5) where the defendant and the victim or his/her agent ad litem have not reached a mediation or settlement agreement on incidental civil action for compensation; or

(6) Other circumstances to which the expedited procedures are not applicable.

**第二百二十四条** 适用速裁程

**Article 224 The trial of a case heard under expedited**



序审理案件，不受本章第一节规定的送达期限的限制，一般不进行法庭调查、法庭辩论，但在判决宣告前应当听取辩护人的意见和被告人的最后陈述意见。

适用速裁程序审理案件，应当当庭宣判。

**第二百二十五条** 适用速裁程序审理案件，人民法院应当在受理后十日以内审结；对可能判处的有期徒刑超过一年的，可以延长至十五日。

**第二百二十六条** 人民法院在审理过程中，发现有被告人的行为不构成犯罪或者不应当追究其刑事责任、被告人违背意愿认罪认罚、被告人否认指控的犯罪事实或者其他不宜适用速裁程序审理的情形，应当按照本章第一节或者第三节的规定重新审理。

### 第三章 二审程序

**第二百二十七条** 被告人、自

**procedures shall not be subject to the limitation of the service period specified in the first section of this Chapter.**

**Investigation or debate in court shall generally not be conducted. However, the defendant's opinion and the defendant's closing statement shall be heard before the judgment is issued.** The judgement of a case to which expedited procedures are applicable shall generally be announced at court.

**Article 225** For a case to which the expedited procedure is applicable, the people's court shall conclude it within ten days of acceptance; and for a case in which fixed-term imprisonment of more than one year may be imposed, the conclusion period may be extended to 15 days.

**Article 226** During the trial, where the people's court finds that the defendant's conduct does not constitute a crime or that he/she shall not be subject to criminal liability, or that the defendant pleads guilty against his/her wills, or that the defendant denies the corpus delicti charged, or other circumstances to which expedite procedures are not applicable, the case shall be re-tried in accordance with the provisions of Section 1 or Section 3 of this Chapter.

### Chapter III Procedures of Second Instance

**Article 227** If a defendant, private prosecutor or their legal representatives refuse to accept the judgment or order of first

诉人和他们的法定代理人，不服地方各级人民法院第一审的判决、裁定，有权用书状或者口头向上一级人民法院上诉。被告人的辩护人和近亲属，经被告人同意，可以提出上诉。

附带民事诉讼的当事人和他们的法定代理人，可以对地方各级人民法院第一审的判决、裁定中的附带民事诉讼部分，提出上诉。

对被告人的上诉权，不得以任何借口加以剥夺。

**第二百二十八条** 地方各级人民检察院认为本级人民法院第一审的判决、裁定确有错误的时候，应当向上一级人民法院提出抗诉。

**第二百二十九条** 被害人及其法定代理人不服地方各级人民法院第一审的判决的，自收到判决书后五日以内，有权请求人民检察院提出抗诉。人民检察院自收到被害人及其法定代理人的请求后五日以内，应当作出是否抗诉的决定并且

**instance made by a local people's court at any level, they shall have the right to appeal in writing or orally to the people's court at the next higher level. Defenders or close relatives of the defendant may, with the consent of the defendant, file appeals. A party to an incidental civil action or his legal representative may file an appeal against that part of a judgment or order of first instance made by a local people's court at any level that deals with the incidental civil action.**

A defendant shall not be deprived on any pretext of his right to appeal.

**Article 228 If a local people's procuratorate at any level considers that there is some definite error in a judgment or order of first instance made by a people's court at the same level, it shall present a protest to the people's court at the next higher level.**

**Article 229 If the victim or his legal representative refuses to accept a judgment of first instance made by a local people's court at any level, he shall, within five days from the date of receiving the written judgment, have the right to request a people's procuratorate to present a protest. The people's procuratorate shall, within five days from the date of receiving the request made by the victim or his legal representative, decide whether to present the protest or not and give him a reply.**

答复请求人。

**第二百三十条** 不服判决的上诉和抗诉的期限为十日，不服裁定的上诉和抗诉的期限为五日，从接到判决书、裁定书的第二日起算。

**第二百三十一条** 被告人、自诉人、附带民事诉讼的原告人和被告人通过原审人民法院提出上诉的，原审人民法院应当在三日以内将上诉状连同案卷、证据移送上一级人民法院，同时将上诉状副本送交同级人民检察院和对方当事人。

被告人、自诉人、附带民事诉讼的原告人和被告人直接向第二审人民法院提出上诉的，第二审人民法院应当在三日以内将上诉状交原审人民法院送交同级人民检察院和对方当事人。

**第二百三十二条** 地方各级人民检察院对同级人民法院第一审判决、裁定的抗诉，应当通过原审人民法院提出抗诉书，并且将抗诉书抄送上一级人民检察院。原审人民

**Article 230** The time limit for an appeal or a protest against a judgment shall be 10 days and the time limit for an appeal or a protest against an order shall be five days; the time limit shall be counted from the day after the written judgment or order is received.

**Article 231** If a defendant, private prosecutor, or a plaintiff or defendant in an incidental civil action files an appeal through the people's court which originally tried the case, the people's court shall within three days transfer the petition of appeal together with the case file and the evidence to the people's court at the next higher level; at the same time it shall deliver duplicates of the petition of appeal to the people's procuratorate at the same level and to the other party. If a defendant, private prosecutor, or a plaintiff or defendant in an incidental civil action files an appeal directly to the people's court of second instance, the people's court shall within three days transfer the petition of appeal to the people's court which originally tried the case for delivery to the people's procuratorate at the same level and to the other party.

**Article 232** If a local people's procuratorate protests against a judgment or order of first instance made by the people's court at the same level, it shall present a written protest through the people's court which originally tried the case and send a copy of the written protest to the people's procuratorate at the next higher level. The people's court which originally tried the case shall transfer the written protest together with the case file

法院应当将抗诉书连同案卷、证据移送上一级人民法院，并且将抗诉书副本送交当事人。

上级人民检察院如果认为抗诉不当，可以向同级人民法院撤回抗诉，并且通知下级人民检察院。

**and evidence to the people's court at the next higher level and shall deliver duplicates of the written protest to the parties. If the people's procuratorate at the next higher level considers the protest inappropriate, it may withdraw the protest from the people's court at the same level and notify the people's procuratorate at the next lower level.**

**第二百三十三条** 第二审人民法院应当就第一审判决认定的事实和适用法律进行全面审查，不受上诉或者抗诉范围的限制。

共同犯罪的案件只有部分被告人上诉的，应当对全案进行审查，一并处理。

**Article 233 A people's court of second instance shall conduct a complete review of the facts determined and the application of law in the judgment of first instance and shall not be limited by the scope of appeal or protest.** If an appeal is filed by only some of the defendants in a case of joint crime, the case shall still be reviewed and handled as a whole.

**第二百三十四条** 第二审人民法院对于下列案件，应当组成合议庭，开庭审理：

（一）被告人、自诉人及其法定代理人对第一审认定的事实、证据提出异议，可能影响定罪量刑的上诉案件；

（二）被告人被判处死刑的上

**Article 234 A people's court of second instance shall form a collegial panel to hear the following case in a court**

**session:** (1) an appellate case where a defendant or a private prosecutor or the legal representative thereof has raised any objection to the facts and evidence determined in the trial at first instance, which may affect conviction and sentencing;

(2) an appellate case where the defendant is sentenced to death penalty;

(3) a case appealed by the people's procuratorate; and

(4) any other case which shall be heard in a court session.

Where a people's court of second instance decides not to hold a court session to hear a case, it shall arraign the defendant and

诉案件；

hear the opinions of other parties concerned, defenders, and agents ad litem.

（三）人民检察院抗诉的案件；

When a people's court of second instance opens a court session to hear a case of appeal or protest, it may do so in the place where the case occurred or in the place where the people's court which originally tried the case is located.

（四）其他应当开庭审理的案件。

第二审人民法院决定不开庭审理的，应当讯问被告人，听取其他当事人、辩护人、诉讼代理人的意见。

第二审人民法院开庭审理上诉、抗诉案件，可以到案件发生地或者原审人民法院所在地进行。

**第二百三十五条** 人民检察院提出抗诉的案件或者第二审人民法院开庭审理的公诉案件，同级人民检察院都应当派员出席法庭。第二审人民法院应当在决定开庭审理后及时通知人民检察院查阅案卷。人民检察院应当在一个月以内查阅完毕。人民检察院查阅案卷的时间不计入审理期限。

**Article 235** For a case protested by a people's procuratorate or a case of public prosecution heard by a people's court of second instance in a court session, the people's procuratorate at the same level shall send procurators to appear before court. The people's court of second instance shall, after deciding to hold a court session to hear a case, notify the people's procuratorate in a timely manner to consult the case file. The people's procuratorate shall complete consultation of the case file within one month. The time for the people's procuratorate to consult the case file shall not be counted in the period of trial.

**第二百三十六条** 第二审人民

**Article 236** After hearing a case of appeal or protest against a

法院对不服第一审判决的上诉、抗诉案件，经过审理后，应当按照下列情形分别处理：

（一）原判决认定事实和适用法律正确、量刑适当的，应当裁定驳回上诉或者抗诉，维持原判；

（二）原判决认定事实没有错误，但适用法律有错误，或者量刑不当的，应当改判；

（三）原判决事实不清楚或者证据不足的，可以在查清事实后改判；也可以裁定撤销原判，发回原审人民法院重新审判。

原审人民法院对于依照前款前三项规定发回重新审判的案件作出判决后，被告人提出上诉或者人民检察院提出抗诉的，第二审人民法院应当依法作出判决或者裁定，不得再发回原审人民法院重新审判。

**第二百三十七条** 第二审人民法院审理被告人或者他的法定代理人、辩护人、近亲属上诉的案件，

**judgment of first instance, a people's court of second instance shall handle it in one of the following manners in light of the different situations:** (1) If the original judgment was correct in the determination of facts and the application of law and appropriate in the meting out of punishment, the people's court shall order rejection of the appeal or protest and affirm the original judgment.

(2) If the original judgment contained no error in the determination of facts but the application of law was incorrect or the punishment was inappropriately meted out, the people's court shall revise the judgment.

(3) If the facts in the original judgment were unclear or the evidence insufficient, the people's court may revise the judgment after ascertaining the facts, or it may rescind the original judgment and remand the case to the people's court which originally tried it for retrial.

Where a defendant appeals or the people's procuratorate presents a protest after the original trial court renders a sentence for a case remanded for retrial under item (3) of the preceding paragraph, the people's court of second instance shall render a sentence or order in accordance with law and may not remand the case again to the original trial court for retrial.

**Article 237** A people's court of second instance which hears a case appealed by a defendant or his/her legal representative, defender, or close relative shall not aggravate the criminal punishment on the defendant. In a case remanded by the people's court of second instance to the original trial court for

不得加重被告人的刑罚。第二审人民法院发回原审人民法院重新审判的案件，除有新的犯罪事实，人民检察院补充起诉的以外，原审人民法院也不得加重被告人的刑罚。

人民检察院提出抗诉或者自诉人提出上诉的，不受前款规定的限制。

**第二百三十八条** 第二审人民法院发现第一审人民法院的审理有下列违反法律规定的诉讼程序的情形之一的，应当裁定撤销原判，发回原审人民法院重新审判：

（一）违反本法有关公开审判的规定的；

（二）违反回避制度的；

（三）剥夺或者限制了当事人的法定诉讼权利，可能影响公正审判的；

（四）审判组织的组成不合法的；

**retrial, the original trial court shall not aggravate the criminal punishment on the defendant, unless there is any new crime and the people's procuratorate has initiated a supplementary prosecution.** The restriction laid down in the preceding paragraph shall not apply to cases protested by a people's procuratorate or cases appealed by private prosecutors.

**Article 238** If a people's court of second instance discovers that when hearing a case, a people's court of first instance violates the litigation procedures prescribed by law in one of the following ways, it shall rule to rescind the original judgment and remand the case to the people's court which originally tried it for retrial: (1) Violating the provisions of this Law regarding trial in public;

(2) Violating the challenge system;

(3) Depriving the parties of their litigation rights prescribed by law or restricting such rights, which may hamper impartiality of a trial;

(4) Unlawful formation of a judicial organisation; or

(5) Other violations against the litigation procedures prescribed by law which may hamper impartiality of a trial.



（五）其他违反法律规定的诉

讼程序，可能影响公正审判的。

**第二百三十九条** 原审人民法院对于发回重新审判的案件，应当另行组成合议庭，依照第一审程序进行审判。对于重新审判后的判决，依照本法第二百二十七条、第二百二十八条、第二百二十九条的规定可以上诉、抗诉。

**Article 239** The people's court which originally tried a case shall form a new collegial panel for the case remanded to it for retrial, in accordance with the procedure of first instance. With respect to the judgment rendered after the retrial, an appeal or protest may be lodged in accordance with the provisions of Article 227, 228 or 229 of this Law.

**第二百四十条** 第二审人民法院对不服第一审裁定的上诉或者抗诉，经过审查后，应当参照本法第二百三十六条、第二百三十八条和第二百三十九条的规定，分别情形用裁定驳回上诉、抗诉，或者撤销、变更原裁定。

**Article 240** After a people's court of second instance has reviewed an appeal or protest against an order of first instance, it shall order rejection of the appeal or protest or rescind or revise the original order respectively with reference to the provisions of Article 236, 238 or 239 of this Law.

**第二百四十一条** 第二审人民法院发回原审人民法院重新审判的案件，原审人民法院从收到发回的案件之日起，重新计算审理期限。

**Article 241** The people's court which originally tried a case shall calculate the time limit anew for the trial of the case remanded to it by the people's court of second instance from the date of receiving the case remanded.

**第二百四十二条** 第二审人民法院审判上诉或者抗诉案件的程序，除本章已有规定的以外，参照

**Article 242** A people's court of second instance shall try cases of appeal or protest with reference to the procedure of first instance, in addition to applying the provisions in this Chapter.



第一审程序的规定进行。

**第二百四十三条** 第二审人民法院受理上诉、抗诉案件，应当在二个月以内审结。对于可能判处死刑的案件或者附带民事诉讼的案件，以及有本法第一百五十八条规定情形之一的，经省、自治区、直辖市高级人民法院批准或者决定，可以延长二个月；因特殊情况还需要延长的，报请最高人民法院批准。

最高人民法院受理上诉、抗诉案件的审理期限，由最高人民法院决定。

**第二百四十四条** 第二审的判决、裁定和最高人民法院的判决、裁定，都是终审的判决、裁定。

**第二百四十五条** 公安机关、人民检察院和人民法院对查封、扣押、冻结的犯罪嫌疑人、被告人的财物及其孳息，应当妥善保管，以供核查，并制作清单，随案移送。任何单位和个人不得挪用或者自行

**Article 243** After accepting a case of appeal or protest, a people's court of second instance shall close the trial of the case within two months. For a case with the possibility of a death penalty or a case with an incidental civil action or under any of the circumstances as set forth in Article 158 of this Law, the period of trial may be extended by two months with the approval or decision of the higher people's court of a province, autonomous region, or centrally-administered municipality; and, if more extension is needed under special circumstances, the extension shall be reported to the Supreme People's Court for approval. The time limit for the Supreme People's Court to try a case of appeal or protest shall be decided by the Supreme People's Court.

**Article 244** All judgments and orders of second instance and all judgments and orders made by the Supreme People's Court are final.

**Article 245** A public security organ, a people's procuratorate, or a people's court shall properly preserve the seized, impounded, or frozen property of a criminal suspect or defendant, as well as the fruits thereof, for future examination and prepare a list, which shall be transferred along with a case. No entity or individual may misappropriate or dispose of such property without permission. The lawful property of a victim shall be returned to the victim in a timely manner. Contraband and perishable articles shall be disposed of

处理。对被害人的合法财产，应当及时返还。对违禁品或者不宜长期保存的物品，应当依照国家有关规定处理。

对作为证据使用的实物应当随案移送，对不宜移送的，应当将其清单、照片或者其他证明文件随案移送。

人民法院作出的判决，应当对查封、扣押、冻结的财物及其孳息作出处理。

人民法院作出的判决生效后，有关机关应当根据判决对查封、扣押、冻结的财物及其孳息进行处理。对查封、扣押、冻结的赃款赃物及其孳息，除依法返还被害人的以外，一律上缴国库。

司法工作人员贪污、挪用或者私自处理查封、扣押、冻结的财物及其孳息的，依法追究刑事责任；不构成犯罪的，给予处分。

**according to the relevant provisions of the state.** Material objects used as evidence shall be transferred along with a case, and, if such transfer is not appropriate, a list, the photos, and other supporting documents of such objects shall be transferred along with the case.

The sentence of a people's court shall include the disposal of the seized, impounded, or frozen property and the fruits thereof.

After the sentence made by a people's court becomes effective, the relevant authority shall dispose of the seized, impounded, or frozen property and the fruits thereof in accordance with the sentence. All proceeds of crime that are seized, impounded, or frozen and the fruits thereof, except those legally returned to the victims, shall be turned over to the state treasury.

Judicial personnel who embezzle, misappropriate, or dispose without permission of the seized, impounded, or frozen property or the fruits thereof shall be subject to criminal liability in accordance with law; or, if no crime is committed, shall be subject to a disciplinary action.

#### 第四章 死刑复核程序

#### Chapter IV Procedure for Review of Death Penalty

**第二百四十六条** 死刑由最高人民法院核准。

**Article 246** Death sentences shall be subject to approval by the Supreme People's Court.

**第二百四十七条** 中级人民法院判处死刑的第一审案件，被告人不上诉的，应当由高级人民法院复核后，报请最高人民法院核准。高级人民法院不同意判处死刑的，可以提审或者发回重新审判。

**Article 247** A case of first instance where an intermediate people's court has imposed a death sentence and the defendant does not appeal shall be reviewed by a higher people's court and submitted to the Supreme People's Court for approval. If the higher people's court does not agree with the death sentence, it may bring the case up for trial or remand the case for retrial. Cases of first instance where a higher people's court has imposed a death sentence and the defendant does not appeal, and cases of second instance where a death sentence has been imposed shall all be submitted to the Supreme People's Court for approval.

高级人民法院判处死刑的第一审案件被告人不上诉的，和判处死刑的第二审案件，都应当报请最高人民法院核准。

**第二百四十八条** 中级人民法院判处死刑缓期二年执行的案件，由高级人民法院核准。

**Article 248** A case where an intermediate people's court has imposed a death sentence with a two-year suspension of execution, shall be subject to approval by a higher people's court.

**第二百四十九条** 最高人民法院复核死刑案件，高级人民法院复核死刑缓期执行的案件，应当由审判员三人组成合议庭进行。

**Article 249** Reviews by the Supreme People's Court of cases involving death sentences and reviews by a higher people's court of cases involving death sentences with a suspension of execution shall be conducted by a collegial panel composed of three judges.

**第二百五十条** 最高人民法院复核死刑案件，应当作出核准或者不核准死刑的裁定。对于不核准死

**Article 250** The Supreme People's Court reviewing a death sentence shall make a ruling to approve or disapprove the death sentence. If the death sentence is disapproved, the Supreme People's Court may remand the case for retrial or render a new sentence.

刑的，最高人民法院可以发回重新审判或者予以改判。

**第二百五十一条** 最高人民法院复核死刑案件，应当讯问被告人，辩护律师提出要求的，应当听取辩护律师的意见。

在复核死刑案件过程中，最高人民法院可以向最高人民法院提出意见。最高人民法院应当将死刑复核结果通报最高人民检察院。

**Article 251** The Supreme People's Court reviewing a death sentence shall arraign the defendant and, if the defense lawyer files a request for presenting an opinion, hear the opinion of the defense lawyer. During the review of a death sentence, the Supreme People's Procuratorate may present an opinion to the Supreme People's Court. The Supreme People's Court shall notify the Supreme People's Procuratorate of the review result.

## 第五章 审判监督程序

## Chapter V Procedure for Trial Supervision

**第二百五十二条** 当事人及其法定代理人、近亲属，对已经发生法律效力、裁定，可以向人民法院或者人民检察院提出申诉，但是不能停止判决、裁定的执行。

**Article 252** A party or his legal representative or his close relative may present a petition to a people's court or a people's procuratorate regarding a legally effective judgment or order, however, execution of the judgment or order shall not be suspended.

**第二百五十三条** 当事人及其法定代理人、近亲属的申诉符合下列情形之一的，人民法院应当重新审判：

（一）有新的证据证明原判决、裁定认定的事实确有错误，可

**Article 253** Where the petition of a party or his/her legal representative or close relative meets any of the following conditions, a people's court shall conduct a retrial: (1) there is new evidence to prove that the facts are erroneously determined in the original sentence or ruling, which may affect conviction and sentencing;

(2) the evidence on which conviction and sentencing are based is not hard and sufficient or shall be excluded in accordance with law, or the material evidence on the facts of the case contradicts each

能影响定罪量刑的；

（二）据以定罪量刑的证据不确实、不充分、依法应当予以排除，或者证明案件事实的主要证据之间存在矛盾的；

（三）原判决、裁定适用法律确有错误的；

（四）违反法律规定的诉讼程序，可能影响公正审判的；

（五）审判人员在审理该案件的时候，有贪污受贿，徇私舞弊，枉法裁判行为的。

other;

(3) the application of law in the original sentence or ruling is incorrect;

(4) the statutory procedures are violated, which may affect an impartial trial; or

(5) a judge committed embezzlement, bribery, or fraud for personal gains or bended the law when trying the case.

**第二百五十四条** 各级人民法院院长对本院已经发生法律效力的判决和裁定，如果发现在认定事实或者在适用法律上确有错误，必须提交审判委员会处理。

最高人民法院对各级人民法院已经发生法律效力的判决和裁定，上级人民法院对下级人民法院已经发生法律效力的判决和裁定，如果发现确有错误，有权提审或者指令

**Article 254** If the president of a people's court at any level finds some definite error in a legally effective judgment or order made by the court as to the determination of facts or application of law, he shall refer the matter to the judicial committee for handling. If the Supreme People's Court finds some definite error in a legally effective judgment or order made by a people's court at any lower level, or if a people's court at a higher level finds some definite error in a legally effective judgment or order made by a people's court at a lower level, it shall have the power to bring the case up for trial itself or may direct the people's court at a lower level to conduct a retrial.

If the Supreme People's Procuratorate finds some definite error in a legally effective judgment or order made by a people's court at any level, or if a people's procuratorate at a higher level finds some definite error in a legally effective judgment or order made by a

下级人民法院再审。

最高人民检察院对各级人民法院已经发生法律效力的判决和裁定，上级人民检察院对下级人民法院已经发生法律效力的判决和裁定，如果发现确有错误，有权按照审判监督程序向同级人民法院提出抗诉。

人民检察院抗诉的案件，接受抗诉的人民法院应当组成合议庭重新审理，对于原判决事实不清楚或者证据不足的，可以指令下级人民法院再审。

people's court at a lower level, it shall have the power to present a protest to the people's court at the same level against the judgment or order in accordance with the procedure for trial supervision.

With respect to a case protested by a people's procuratorate, the people's court that has accepted the protest shall form a collegial panel for retrial; if the facts, on the basis of which the original judgment was made, are not clear or the evidence is not sufficient, it may direct the people's court at the lower level to try the case again.

**第二百五十五条** 上级人民法院指令下级人民法院再审的，应当指令原审人民法院以外的下级人民法院审理；由原审人民法院审理更为适宜的，也可以指令原审人民法院审理。

**Article 255** Where a people's court at a higher level orders a people's court at a lower level to retry a case, it shall order a people's court at a lower level other than the original trial court to try the case; but if it is more appropriate for the case to be retried by the original trial court, it may order the original trial court to retry the case.

**第二百五十六条** 人民法院按照审判监督程序重新审判的案件，由原审人民法院审理的，应当另行组成合议庭进行。如果原来是第一

**Article 256** Where a people's court retries a case under the trial supervision procedure, a new collegial panel shall be formed if the retrial is conducted by the original trial court. If the case is originally tried by a court of first instance, it shall be retried under procedures at first instance and the sentence or ruling rendered may be appealed or pretested. If the case is

审案件，应当依照第一审程序进行审判，所作的判决、裁定，可以上诉、抗诉；如果原来是第二审案件，或者是上级人民法院提审的案件，应当依照第二审程序进行审判，所作的判决、裁定，是终审的判决、裁定。

人民法院开庭审理的再审案件，同级人民检察院应当派员出席法庭。

#### 第二百五十七条 人民法院决定再审的案件，需要对被告人采取强制措施的，由人民法院依法决定；人民检察院提出抗诉的再审案件，需要对被告人采取强制措施的，由人民检察院依法决定。

人民法院按照审判监督程序审判的案件，可以决定中止原判决、裁定的执行。

#### 第二百五十八条 人民法院按照审判监督程序重新审判的案件，应当在作出提审、再审决定之日起三个月以内审结，需要延长期限

应当在作出提审、再审决定之日起三个月以内审结，需要延长期限

**originally tried by a court of second instance or is a case directly retried by a people's court at a higher level, it shall be retried under procedures at second instance and the sentence or ruling rendered shall be final.** When a people's court retries a case in a court session, the people's procuratorate at the same level shall send procurators to appear before the court.

**Article 257** For a case which a people's court decides to retry, any necessary compulsory measure against a defendant shall be decided by the people's court; or, for a case to be retried upon protest by a people's procuratorate, any necessary compulsory measure against a defendant shall be decided by the people's procuratorate. For a case tried under the trial supervision procedures, a people's court may decide to suspend the execution of the original sentence or ruling.

**Article 258** With respect to a case retried by a people's court under the procedure for trial supervision, it shall conclude the trial within three months from the day on which it makes the decision to bring the case up for trial itself or on which the decision is made for it to retry the case. If it is necessary to extend the time limit, the period shall not exceed six



的，不得超过六个月。

接受抗诉的人民法院按照审判监督程序审判抗诉的案件，审理期限适用前款规定；对需要指令下级人民法院再审的，应当自接受抗诉之日起一个月以内作出决定，下级人民法院审理案件的期限适用前款规定。

**months.** The provisions of the preceding paragraph shall apply to the time limit for the trial of a protested case that is accepted by a people's court and is to be tried by it under the procedure for trial supervision. Where it is necessary to direct a people's court at a lower level to try a protested case again, a decision to such an effect shall be made within one month from the day on which the protested case is accepted; the provisions of the preceding paragraph shall apply to the time limit for the trial of the case by the people's court at the lower level.

#### 第四编 执行

#### Part IV Execution

**第二百五十九条** 判决和裁定在发生法律效力后执行。

**Article 259** Judgments and orders shall be executed after they become legally effective. The following judgments and orders are legally effective:

下列判决和裁定是发生法律效力的判决和裁定：

(1) Judgments and orders against which no appeal or protest has been filed within the legally prescribed time limit;

(2) Judgments and orders of final instance; and

（一）已过法定期限没有上诉、抗诉的判决和裁定；

(3) Judgments of the death penalty approved by the Supreme People's Court and judgments of the death penalty with a two-year suspension of execution approved by a higher people's court.

（二）终审的判决和裁定；

（三）最高人民法院核准的死刑的判决和高级人民法院核准的死刑缓期二年执行的判决。

**第二百六十条** 第一审人民法院判决被告人无罪、免除刑事处罚

**Article 260** If a defendant in custody is given the verdict of not guilty or exempted from criminal punishment by a people's court of first instance, he shall be released immediately after



的，如果被告人在押，在宣判后应当立即释放。

**the judgment is pronounced.**

**第二百六十一条** 最高人民法院判处和核准的死刑立即执行的判决，应当由最高人民法院院长签发执行死刑的命令。

**Article 261** When a judgment of the death penalty with immediate execution is pronounced or approved by the Supreme People's Court, the President of the Supreme People's Court shall sign and issue an order to execute the death sentence. If a criminal sentenced to death with a two-year suspension of execution does not intentionally commit another crime during the period of suspension of execution, and his punishment should be commuted upon the expiration of such period according to law, and the executive organ shall submit a written recommendation to a higher people's court for ruling; if the criminal intentionally commits a crime, with wicked circumstances, which is proved to be true, the death penalty shall therefor be executed, and the higher people's court shall report the case to the Supreme People's Court for approval; and if the criminal intentionally commits a crime but the death penalty is not executed, the period of death penalty with suspension of execution shall be recalculated, and the same shall be filed with the Supreme People's Court for the record.

被判处死刑缓期二年执行的罪犯，在死刑缓期执行期间，如果没有故意犯罪，死刑缓期执行期满，应当予以减刑的，由执行机关提出书面意见，报请高级人民法院裁定；如果故意犯罪，情节恶劣，查证属实，应当执行死刑的，由高级人民法院报请最高人民法院核准；对于故意犯罪未执行死刑的，死刑缓期执行的期间重新计算，并报最高人民法院备案。

**第二百六十二条** 下级人民法院接到最高人民法院执行死刑的命令后，应当在七日以内交付执行。但是发现有下列情形之一的，应当停止执行，并且立即报告最高人民法院，由最高人民法院作出裁定：

**Article 262** After receiving an order from the Supreme People's Court to execute a death sentence, a people's court at a lower level shall cause the sentence to be executed within seven days. However, under one of the following conditions the people's court at a lower level shall suspend execution and immediately submit a report to the Supreme People's Court for an order: (1) If it is discovered before the execution that the sentence may contain an error;  
(2) If, before the execution, the criminal exposes major criminal

（一）在执行前发现判决可能有错误的；

（二）在执行前罪犯揭发重大犯罪事实或者有其他重大立功表现，可能需要改判的；

（三）罪犯正在怀孕。

前款第一项、第二项停止执行的原因消失后，必须报请最高人民法院院长再签发执行死刑的命令才能执行；由于前款第三项原因停止执行的，应当报请最高人民法院依法改判。

facts or renders other significantly meritorious service, thus the sentence may need to be revised; or

(3) If the criminal is pregnant.

If the reason given in item (1) or (2) of the preceding paragraph which caused the suspension of the sentence has disappeared, the sentence may be executed only after a report is submitted to the President of the Supreme People's Court for him to sign and issue another order for execution of the death sentence. If execution is suspended for the reason given in item (3) of the preceding paragraph, a request shall be submitted to the Supreme People's Court for it to alter the sentence according to law.

**第二百六十三条** 人民法院在交付执行死刑前，应当通知同级人民检察院派员临场监督。

死刑采用枪决或者注射等方法执行。

死刑可以在刑场或者指定的羁押场所内执行。

指挥执行的审判人员，对罪犯应当验明正身，讯问有无遗言、信

**Article 263** Before a people's court delivers a death sentence to be executed, it shall notify the people's procuratorate at the same level to send an officer to supervise the execution. A death sentence shall be executed by such means as shooting or injection.

A death sentence may be executed on the execution ground or in a designated place of custody.

The judicial officer directing the execution shall verify the identity of the criminal, ask him if he has any last words or letters and then deliver him to the executioner for execution of the death sentence. If it is discovered before the execution that there may be an error, the execution shall be suspended and a report submitted to the Supreme People's Court for an order.

Executions of death sentences shall be announced but shall not be

札，然后交付执行人员执行死刑。

在执行前，如果发现可能有错误，应当暂停执行，报请最高人民法院裁定。

执行死刑应当公布，不应示众。

执行死刑后，在场书记员应当写成笔录。交付执行的人民法院应当将执行死刑情况报告最高人民法院。

执行死刑后，交付执行的人民法院应当通知罪犯家属。

held in public.

After a death sentence is executed, the court clerk on the scene shall prepare a written record of it. The people's court that delivers the death sentence to be executed shall submit a report on the execution to the Supreme People's Court.

After a death sentence is executed, the people's court that delivers the death sentence to be executed shall notify the family members of the criminal.

**第二百六十四条** 罪犯被交付执行刑罚的时候，应当由交付执行的人民法院在判决生效后十日以内将有关的法律文书送达公安机关、监狱或者其他执行机关。

对被判处死刑缓期二年执行、无期徒刑、有期徒刑的罪犯，由公安机关依法将该罪犯送交监狱执行刑罚。对被判处有期徒刑的罪犯，在被交付执行刑罚前，剩余刑期在

**Article 264** Where a criminal is delivered for execution of a criminal penalty, the people's court delivering the criminal for execution shall serve the relevant legal documents upon the public security organ, prison, or other execution authority within 10 days after the sentence takes effect. A criminal sentenced to death penalty with a two-year suspension, life imprisonment, or fixed-term imprisonment shall be delivered by a public security organ to a prison for execution of the criminal penalty. Where a criminal is sentenced to fixed-term imprisonment but the remaining term of the penalty is not more than three months before the criminal is delivered for execution, the sentence shall be executed by a jail instead. For a criminal sentenced to criminal detention, the sentence shall be executed by a public security organ.

As to a juvenile delinquent, his criminal punishment shall be

三个月以下的，由看守所代为执行。对被判处拘役的罪犯，由公安机关执行。

对未成年犯应当在未成年犯管教所执行刑罚。

执行机关应当将罪犯及时收押，并且通知罪犯家属。

判处有期徒刑、拘役的罪犯，执行期满，应当由执行机关发给释放证明书。

executed in a reformatory for juvenile delinquents.

An executive authority shall take a criminal into custody without delay and notify the family members of the criminal.

A criminal sentenced to fixed-term imprisonment or criminal detention, upon completion of execution of the sentence, shall be issued a certificate of release by the executive authority.

**第二百六十五条** 对被判处有期徒刑或者拘役的罪犯，有下列情形之一的，可以暂予监外执行：

（一）有严重疾病需要保外就医的；

（二）怀孕或者正在哺乳自己婴儿的妇女；

（三）生活不能自理，适用暂予监外执行不致危害社会的。

对被判处无期徒刑的罪犯，有

**Article 265 Under any of the following circumstances, a criminal sentenced to fixed-term imprisonment or criminal detention may temporarily serve his/her sentence outside an incarceration facility:** (1) The criminal suffers a serious illness and needs to be released on bail for medical treatment;

(2) The criminal is a pregnant woman or a woman who is breastfeeding her own baby; or

(3) The convict cannot live by himself or herself, and it will not cause any danger to the society for the criminal to temporarily serve his/her sentence outside an incarceration facility.

Under item (2) of the preceding paragraph, a criminal sentenced to life imprisonment may temporarily serve her sentence outside an incarceration facility.

If the release of a criminal on bail for medical treatment may cause any danger to the society or a criminal suffers any self-inflicted injury or disability, the criminal may not be released on bail for

前款第二项规定情形的，可以暂予监外执行。

对适用保外就医可能有社会危险性的罪犯，或者自伤自残的罪犯，不得保外就医。

对罪犯确有严重疾病，必须保外就医的，由省级人民政府指定的医院诊断并开具证明文件。

在交付执行前，暂予监外执行由交付执行的人民法院决定；在交付执行后，暂予监外执行由监狱或者看守所提出书面意见，报省级以上监狱管理机关或者设区的市一级以上公安机关批准。

medical treatment.

If a criminal suffers a serious illness and must be released on bail for medical treatment, a hospital designated by the people's government at the provincial level shall conduct diagnosis and issue a supporting document.

Before a criminal is delivered for execution of a criminal penalty, whether the criminal temporarily serves his/her sentence outside an incarceration facility shall be decided by the people's court which delivers the criminal for execution of the criminal penalty; after a criminal is delivered for execution of a criminal penalty, regarding a criminal's temporarily serving a sentence outside an incarceration facility, the prison or jail shall prepare a written opinion, which shall be reported to the prison administrative authority at or above the provincial level or the public security authority at or above the level of a city divided into districts for approval.

**第二百六十六条** 监狱、看守所提出暂予监外执行的书面意见的，应当将书面意见的副本抄送人民检察院。人民检察院可以向决定或者批准机关提出书面意见。

**Article 266** A prison or jail which prepares a written opinion on a criminal's temporarily serving a sentence outside an incarceration facility shall send a copy of the written opinion to a people's procuratorate. The people's procuratorate may provide a written opinion to the deciding or approving authority.

**第二百六十七条** 决定或者批准暂予监外执行的机关应当将暂予监外执行决定抄送人民检察院。人

**Article 267** The authority which decides or approves a convict's temporarily serving a sentence outside an incarceration facility shall send a copy of its decision to the people's procuratorate. Deeming the temporary serving of a sentence outside an incarceration facility improper, the

民检察院认为暂予监外执行不当的，应当自接到通知之日起一个月以内将书面意见送交决定或者批准暂予监外执行的机关，决定或者批准暂予监外执行的机关接到人民检察院的书面意见后，应当立即对该决定进行重新核查。

**people's procuratorate shall, within one month from the date of receiving the notification, submit a written opinion to the deciding or approving authority, and the deciding or approving authority shall reexamine its decision immediately after receiving the written opinion of the people's procuratorate.**

**第二百六十八条** 对暂予监外执行的罪犯，有下列情形之一的，应当及时收监：

（一）发现不符合暂予监外执行条件的；

（二）严重违法有关暂予监外执行监督管理规定的；

（三）暂予监外执行的情形消失后，罪犯刑期未届满的。

对于人民法院决定暂予监外执行的罪犯应当予以收监的，由人民法院作出决定，将有关的法律文书送达公安机关、监狱或者其他执行机关。

不符合暂予监外执行条件的罪

**Article 268 Under any of the following circumstances, a criminal temporarily serving his or her sentence outside an incarceration facility shall be taken back to prison in a timely manner:** (1) it is discovered that the criminal does not meet the conditions for temporarily serving a sentence outside an incarceration facility;

(2) the criminal has seriously violated the provisions on supervision and management of criminals temporarily serving a sentence outside an incarceration facility; or

(3) The circumstances allowing a criminal's serving a sentence outside an incarceration facility disappear and the criminal's term of sentence has not expired.

Where a criminal who temporarily serves a sentence outside an incarceration facility as decided by a people's court shall be taken back to prison, a decision shall be made by the people's court, and the relevant legal documents shall be served upon the public security organ, prison, or other execution authority.

Where a criminal who does not meet the conditions for temporarily serving a sentence outside an incarceration facility is permitted to temporarily serve a sentence outside an incarceration facility by illegal means such as bribery, the time served outside an incarceration facility shall not be counted in the executed period of punishment. If a criminal escapes during the period of temporarily

犯通过贿赂等非法手段被暂予监外执行的，在监外执行的期间不计入执行刑期。罪犯在暂予监外执行期间脱逃的，脱逃的期间不计入执行刑期。

罪犯在暂予监外执行期间死亡的，执行机关应当及时通知监狱或者看守所。

**第二百六十九条** 对被判处管制、宣告缓刑、假释或者暂予监外执行的罪犯，依法实行社区矫正，由社区矫正机构负责执行。

**第二百七十条** 对被判处剥夺政治权利的罪犯，由公安机关执行。执行期满，应当由执行机关书面通知本人及其所在单位、居住地基层组织。

**第二百七十一条** 被判处罚金的罪犯，期满不缴纳的，人民法院应当强制缴纳；如果由于遭遇不能抗拒的灾祸等原因缴纳确实有困难的，经人民法院裁定，可以延期缴纳、酌情减少或者免除。

serving a sentence outside an incarceration facility, the period of escape shall not be counted in the executed period of punishment.

Where a criminal dies during the period of temporarily serving a sentence outside an incarceration facility, the execution authority shall notify the prison or jail without delay.

**Article 269** A criminal who is sentenced to supervision without incarceration, is granted probation or parole, or temporarily serving a sentence outside an incarceration facility shall be subject to community correction, which shall be executed by a community correction institution according to law.

**Article 270** For a criminal sentenced to deprivation of political rights, the penalty shall be executed by a public security organ. After the criminal finishes serving the sentence, the execution authority shall notify in writing the criminal, his/her employer, and the basic organizations at the place of his/her residence.

**Article 271** If a criminal sentenced to a fine fails to pay the fine within the time limit, the people's court shall compel him/her to pay; if he/she has true difficulty to make payment due to an disaster of force majeure or other reasons, upon a ruling by the people's court, the payment may be postponed, reduced or exempted as appropriate.



**第二百七十二条** 没收财产的判决，无论附加适用或者独立适用，都由人民法院执行；在必要的时候，可以会同公安机关执行。

**Article 272** All judgments on confiscation of property, whether imposed as a supplementary punishment or independently, shall be executed by a people's court; when necessary, the people's court may execute such judgments jointly with a public security organ.

**第二百七十三条** 罪犯在服刑期间又犯罪的，或者发现了判决的时候所没有发现的罪行，由执行机关移送人民检察院处理。

**Article 273** Where a criminal commits a crime again while serving his sentence, or where a criminal act that is discovered was not known at the time of judgment, he shall be transferred by the executing authority to a people's procuratorate for handling. Where a criminal sentenced to supervision without incarceration, criminal detention, fixed-term imprisonment, or life imprisonment shows true repentance or has meritorious acts while serving his/her sentence and shall be granted commutation or parole in accordance with law, the execution authority shall prepare a written recommendation, report to the people's court for examination and decision, and send a copy of the written recommendation to the people's procuratorate. The people's procuratorate may provide a written opinion to the people's court.

被判处管制、拘役、有期徒刑或者无期徒刑的罪犯，在执行期间确有悔改或者立功表现，应当依法予以减刑、假释的时候，由执行机关提出建议书，报请人民法院审核裁定，并将建议书副本抄送人民检察院。人民检察院可以向人民法院提出书面意见。

**第二百七十四条** 人民检察院认为人民法院减刑、假释的裁定不当，应当在收到裁定书副本后二十日以内，向人民法院提出书面纠正意见。人民法院应当在收到纠正意见后一个月以内重新组成合议庭进行审理，作出最终裁定。

**Article 274** If a people's procuratorate considers that the order on commutation of sentence or on parole made by a people's court is improper, it shall, within 20 days from the date of receiving a copy of the written order, submit a written recommendation to the people's court for correction. The people's court shall, within one month from the date of receiving the recommendation, form a new collegial panel to handle the case and render a final order.



**第二百七十五条** 监狱和其他执行机关在刑罚执行中，如果认为判决有错误或者罪犯提出申诉，应当转请人民检察院或者原审人民法院处理。

**Article 275** If, during execution of a criminal punishment, a prison or any other executing authority believes that there is an error in the judgment or the criminal lodges a petition, it shall refer the matter to a people's procuratorate or a people's court that pronounced the original judgment for handling.

**第二百七十六条** 人民检察院对执行机关执行刑罚的活动是否合法实行监督。如果发现有违法的情况，应当通知执行机关纠正。

**Article 276** People's procuratorates shall supervise the execution of criminal punishments by an executing authority to see if the execution conforms to law. If they discover any illegalities, they shall notify the executing authority to correct them.

## 第五编 特别程序

## Part V Special Procedures

### 第一章 未成年人刑事案件诉讼程序

### Chapter I Procedures for Juvenile Criminal Cases

**第二百七十七条** 对犯罪的未成年人实行教育、感化、挽救的方针，坚持教育为主、惩罚为辅的原则。

**Article 277** For juvenile criminals, the policy of education, reformation, and redemption shall apply, and the principle of education assisted by punishment shall be followed. When handling juvenile criminal cases, a people's court, a people's procuratorate, and a public security organ shall ensure that juveniles are able to exercise their procedural rights, ensure that they receive legal assistance, and assign judges, prosecutors, and investigators who are familiar with the physical and psychological characteristics of juveniles to handle such cases.

人民法院、人民检察院和公安机关办理未成年人刑事案件，应当保障未成年人行使其诉讼权利，保障未成年人得到法律帮助，并由熟悉未成年人身心特点的审判人员、检察人员、侦查人员承办。

**第二百七十八条** 未成年犯罪嫌疑人、被告人没有委托辩护人的，人民法院、人民检察院、公安机关应当通知法律援助机构指派律师为其提供辩护。

**Article 278** For a juvenile criminal suspect or defendant who has not retained a defender, a people's court, a people's procuratorate, or a public security organ shall notify a legal aid agency to assign a lawyer to defend him/her.

**第二百七十九条** 公安机关、人民检察院、人民法院办理未成年人刑事案件，根据情况可以对未成年犯罪嫌疑人、被告人的成长经历、犯罪原因、监护教育等情况进行调查。

**Article 279** When handling juvenile criminal cases, a people's court, a people's procuratorate, and a public security organ may, according to the actual circumstances, investigate the growth, cause of crime, guardianship, education, and other aspects of the juvenile criminal suspect or defendant.

**第二百八十条** 对未成年犯罪嫌疑人、被告人应当严格限制适用逮捕措施。人民检察院审查批准逮捕和人民法院决定逮捕，应当讯问未成年犯罪嫌疑人、被告人，听取辩护律师的意见。

**Article 280** An arrest of a juvenile criminal suspect or defendant shall be under strict control. Before approving or deciding an arrest, a people's procuratorate or a people's court shall arraign a juvenile criminal suspect or defendant and hear the opinion of his/her defense lawyer. Juveniles and adults who are detained or arrested or are serving criminal penalties shall be held in custody, managed, and educated separately.

对被拘留、逮捕和执行刑罚的未成年人与成年人应当分别关押、分别管理、分别教育。

**第二百八十一条** 对于未成年人刑事案件，在讯问和审判的时候，应当通知未成年犯罪嫌疑人、

**Article 281** During the interrogation and trial of a juvenile criminal case, the legal representative of a juvenile criminal suspect or defendant shall be notified to be present. If such notification is impossible, the legal representative is unable to

被告人的法定代理人到场。无法通知、法定代理人不能到场或者法定代理人是共犯的，也可以通知未成年犯罪嫌疑人、被告人的其他成年亲属，所在学校、单位、居住地基层组织或者未成年人保护组织的代表到场，并将有关情况记录在案。到场的法定代理人可以代为行使未成年犯罪嫌疑人、被告人的诉讼权利。

到场的法定代理人或者其他人员认为办案人员在讯问、审判中侵犯未成年人合法权益的，可以提出意见。讯问笔录、法庭笔录应当交给到场的法定代理人或者其他人员阅读或者向他宣读。

讯问女性未成年犯罪嫌疑人，应当有女工作人员在场。

审判未成年人刑事案件，未成年被告人最后陈述后，其法定代理人可以进行补充陈述。

询问未成年被害人、证人，适

**be present, or the legal representative is an accomplice, any other adult relative of the juvenile criminal suspect or defendant or a representative of his/her school or employer, a basic organization at the place of his/her residence, or a juvenile protection organization may be notified to be present, and relevant circumstances shall be recorded. The present legal representative may exercise the procedural rights of the juvenile criminal suspect or defendant on his/her behalf.** Deeming that case-handling personnel have infringed the juvenile's lawful rights and interests in the course of interrogation or trial, the present legal representative or other person may present an opinion. The interrogation or court transcripts shall be handed over to the present legal representative or other person for reading or be read out to the present legal representative or other person.

When a female juvenile criminal suspect is interrogated, there shall be a female staff member present.

In the trial of a juvenile criminal case, after the juvenile defendant delivers his/her final statement, his/her legal representative may make a supplementary statement.

Paragraphs 1, 2, and 3 hereof shall apply to the interview or questioning of juvenile victims and witnesses.

用第一款、第二款、第三款的规定。

**第二百八十二条** 对于未成年人涉嫌刑法分则第四章、第五章、第六章规定的犯罪，可能判处一年有期徒刑以下刑罚，符合起诉条件，但有悔罪表现的，人民检察院可以作出附条件不起诉的决定。人民检察院在作出附条件不起诉的决定以前，应当听取公安机关、被害人的意见。

对附条件不起诉的决定，公安机关要求复议、提请复核或者被害人申诉的，适用本法第一百七十九条、第一百八十条的规定。

未成年犯罪嫌疑人及其法定代理人对人民检察院决定附条件不起诉有异议的，人民检察院应当作出起诉的决定。

**第二百八十三条** 在附条件不起诉的考验期内，由人民检察院对被附条件不起诉的未成年犯罪嫌疑人进行监督考察。未成年犯罪嫌疑人

**Article 282** When a juvenile is suspected of a crime in Chapter IV, V, or VI of the Specific Provisions of the Criminal Law and may be sentenced to a fixed-term imprisonment of one year or a lighter punishment, if the prosecution conditions are met but the juvenile suspect has shown repentance, a people's procuratorate may make a conditional non-prosecution decision. Before making a conditional non-prosecution decision, the people's procuratorate shall hear the opinions of the public security organ and the victim. Where the public security organ requests reconsideration or review or the victim files a petition against the conditional non-prosecution decision, the provisions of Articles 179 and 180 of this Law shall apply.

Where the juvenile criminal suspect or his/her legal representative raises any objection to the conditional non-prosecution decision of the people's procuratorate, the people's procuratorate shall make a decision to initiate a public prosecution.

**Article 283** During the probation period for conditional non-prosecution, a people's procuratorate shall supervise and inspect a juvenile criminal suspect who is not prosecuted under conditions. The guardian of the juvenile criminal suspect shall strengthen control and education of the juvenile criminal suspect and cooperate with the people's

人的监护人，应当对未成年犯罪嫌疑人加强管教，配合人民检察院做好监督考察工作。

附条件不起诉的考验期为六个月以上一年以下，从人民检察院作出附条件不起诉的决定之日起计算。

被附条件不起诉的未成年犯罪嫌疑人，应当遵守下列规定：

（一）遵守法律法规，服从监督；

（二）按照考察机关的规定报告自己的活动情况；

（三）离开所居住的市、县或者迁居，应当报经考察机关批准；

（四）按照考察机关的要求接受矫治和教育。

**procuratorate in supervision and inspection.** The probation period for conditional non-prosecution shall range from six months to one year, starting from the day when the people's procuratorate makes a conditional non-prosecution decision.

A juvenile criminal suspect who is not prosecuted under conditions shall comply with the following provisions:

(1) abiding by laws and regulations and obeying supervision;

(2) reporting his/her activities as required by the inspection authority;

(3) obtaining the approval of the inspection authority before leaving the city or county where he/she resides or relocating in another place; and

(4) receiving correction and education as required by the inspection authority.

**第二百八十四条** 被附条件不起诉的未成年犯罪嫌疑人，在考验期内有下列情形之一的，人民检察院应当撤销附条件不起诉的决定，

**Article 284** For a juvenile criminal suspect who is not prosecuted under conditions, a people's procuratorate shall revoke the conditional non-prosecution decision and initiate a public prosecution under any of the following circumstances during the probation period: (1) the juvenile criminal suspect commits a new crime, or it is discovered that another crime

提起公诉：

（一）实施新的犯罪或者发现决定附条件不起诉以前还有其他犯罪需要追诉的；

（二）违反治安管理规定或者考察机关有关附条件不起诉的监督管理规定，情节严重的。

被附条件不起诉的未成年犯罪嫌疑人，在考验期内没有上述情形，考验期满的，人民检察院应当作出不予起诉的决定。

committed before the conditional non-prosecution decision is made needs to be prosecuted; or

(2) the juvenile criminal suspect seriously violates the provisions on public security administration or the provisions of the inspection authority on supervising and administering conditional non-prosecution.

Where a juvenile criminal suspect who is not prosecuted under conditions does not fall any of the above circumstances during the probation period, upon expiration of the probation period, the people's procuratorate shall make a non-prosecution decision.

**第二百八十五条** 审判的时候被告人不满十八周岁的案件，不公开审理。但是，经未成年被告人及其法定代理人同意，未成年被告人所在学校和未成年人保护组织可以派代表到场。

**Article 285** A case may not be tried openly if the defendant has not reached the age of 18 at the time of trial. However, with the consent of the juvenile defendant or his/her legal representative, the juvenile defendant's school and a juvenile protection organization may send representatives to be present.

**第二百八十六条** 犯罪的时候不满十八周岁，被判处五年有期徒刑以下刑罚的，应当对相关犯罪记录予以封存。

犯罪记录被封存的，不得向任

**Article 286** Where a juvenile has not reached the age of 18 when committing a crime and is sentenced to fixed-term imprisonment of five years or a lighter punishment, the related criminal records shall be sealed for preservation. The sealed criminal records may not be provided to any entity or individual, unless as needed for a judicial authority to handle cases or for consultation by relevant entities according to relevant state provisions. Entities legally consulting such records shall keep

何单位和个人提供，但司法机关为办案需要或者有关单位根据国家规定进行查询的除外。依法进行查询的单位，应当对被封存的犯罪记录的情况予以保密。

record information confidential.

**第二百八十七条** 办理未成年人刑事案件，除本章已有规定的以外，按照本法的其他规定进行。

**Article 287** In the handling of juvenile criminal cases, matters not included in this Chapter shall be handled under other provisions of this Law.

## **第二章 当事人和解的公诉案件诉讼程序**

## **Chapter II Procedures for Public Prosecution Cases Where Parties Have Reached Settlement**

**第二百八十八条** 下列公诉案件，犯罪嫌疑人、被告人真诚悔罪，通过向被害人赔偿损失、赔礼道歉等方式获得被害人谅解，被害人自愿和解的，双方当事人可以和解：

**Article 288** In the following cases of public prosecution, if the criminal suspect or defendant has showed genuine repentance and obtained forgiveness from the victim by making compensation or an apology to the victim, and the victim voluntarily agrees on a settlement, both parties may reach a settlement: (1) a case regarding a crime which arises from civil disputes as described in Chapter IV or V of the Specific Provisions of the Criminal Law and is punishable by fixed-term imprisonment of three years or a lighter penalty; or

（一）因民间纠纷引起，涉嫌刑法分则第四章、第五章规定的犯罪案件，可能判处三年有期徒刑以下刑罚的；

(2) a case regarding a negligent crime, other than a crime of malfeasance, which is punishable by fixed-term imprisonment of seven years or a lighter penalty.

If a criminal suspect or defendant once committed any intentional crime in the past five years, the procedures in this Chapter shall not apply.

（二）除渎职犯罪以外的可能判处七年有期徒刑以下刑罚的过失



犯罪案件。

犯罪嫌疑人、被告人在五年以内曾经故意犯罪的，不适用本章规定的程序。

**第二百八十九条** 双方当事人和解的，公安机关、人民检察院、人民法院应当听取当事人和其他有关人员的意见，对和解的自愿性、合法性进行审查，并主持制作和解协议书。

**Article 289** When both parties have reached a settlement, a public security organ, a people's procuratorate, or a people's court shall hear the opinions of the parties and other relevant persons, examine whether the settlement is reached voluntarily and legally, and preside at the preparation of a settlement agreement.

**第二百九十条** 对于达成和解协议的案件，公安机关可以向人民检察院提出从宽处理的建议。人民检察院可以向人民法院提出从宽处罚的建议；对于犯罪情节轻微，不需要判处刑罚的，可以作出不起起诉的决定。人民法院可以依法对被告人从宽处罚。

**Article 290** For a case where a settlement agreement is reached, a public security organ may provide a leniency suggestion to the people's procuratorate. A people's procuratorate may provide a leniency suggestion to the people's court; and, if the circumstances of a crime are minor and no criminal punishment is necessary, may make a decision not to initiate a public prosecution. A people's court may render a lenient sentence to a defendant in accordance with law.

### 第三章 缺席审判程序

### Chapter III Procedures for Trials in Absentia

**第二百九十一条** 对于贪污贿赂犯罪案件，以及需要及时进行审判，经最高人民检察院核准的严重

**Article 291** For a corruption or bribery criminal case, or a case regarding seriously endangering State security or terrorist criminal activities identified by the people's procuratorate, which requires prompt trial, if the criminal suspect or defendant has been abroad and the supervision authorities or



危害国家安全犯罪、恐怖活动犯罪案件，犯罪嫌疑人、被告人在境外，监察机关、公安机关移送起诉，人民检察院认为犯罪事实已经查清，证据确实、充分，依法应当追究刑事责任的，可以向人民法院提起公诉。人民法院进行审查后，对于起诉书中明确的指控犯罪事实，符合缺席审判程序适用条件的，应当决定开庭审判。

前款案件，由犯罪地、被告人离境前居住地或者最高人民法院指定的中级人民法院组成合议庭进行审理。

**第二百九十二条** 人民法院应当通过有关国际条约规定的或者外交途径提出的司法协助方式，或者被告人所在地法律允许的其他方式，将传票和人民检察院的起诉书副本送达被告人。传票和起诉书副本送达后，被告人未按要求到案的，人民法院应当开庭审理，依法作出判决，并对违法所得及其他涉案财产作出处理。

**the public security authorities have transferred the case for prosecution, the people's procuratorate may initiate a public prosecution in the people's court if it finds that the particulars of offence are already identified, that the evidence is conclusive and sufficient, and that criminal liability shall be pursued in accordance with law. After conducting a review, the people's court shall decide to open a court session if the indictment includes clear particulars of offence accused and meets the conditions to which the procedures for trials in absentia apply.** The case specified in the preceding paragraph shall be heard by a collegial panel composed of the intermediate people's court at the site of the crime, at the residence of the defendant before leaving China or as designated by the Supreme People's Court.

**Article 292** The people's court shall serve the summon and a copy of the people's procuratorate's indictment on the defendant by judicial assistance means as prescribed in the relevant international treaties, or as put forward through diplomatic channels, or by other means permitted by the law of the defendant's location. If the defendant is not present court as required after the summon and the copy of the indictment is served, the people's court shall hear the case in open court, render a judgement in accordance with law, and dispose of unlawful gains and other property involved in the case.

**第二百九十三条** 人民法院缺席审判案件，被告人有权委托辩护人，被告人的近亲属可以代为委托辩护人。被告人及其近亲属没有委托辩护人的，人民法院应当通知法律援助机构指派律师为其提供辩护。

**第二百九十四条** 人民法院应当将判决书送达被告人及其近亲属、辩护人。被告人或者其近亲属不服判决的，有权向上一级人民法院上诉。辩护人经被告人或者其近亲属同意，可以提出上诉。

人民检察院认为人民法院的判决确有错误的，应当向上一级人民法院提出抗诉。

**第二百九十五条** 在审理过程中，被告人自动投案或者被抓获的，人民法院应当重新审理。

罪犯在判决、裁定发生法律效力后到案的，人民法院应当将罪犯交付执行刑罚。交付执行刑罚前，人民法院应当告知罪犯有权对判

**Article 293** For a case tried in absentia by the people's court, the defendant has the right to entrust a person as his/her defender, and the defendant's close relative may entrust a defender on his/her behalf. If the defendant or his/her close relative does not entrust a defender, the people's court shall notify a legal aid agency to designate a lawyer to provide the defendant with defense.

**Article 294** The people's court shall serve the written judgement on the defendant and his/her close relatives and the defender. The defendant or his/her close relative who is not satisfied with the judgement has the right to appeal to the people's court at the next higher level, and the defender may also make an appeal with the consent of the defendant or his/her close relative. If the people's procuratorate believes that the judgment of the people's court is indeed wrong, it shall present a protest to the people's court at the next higher level.

**Article 295** Where, during the course of a trial, the defendant voluntarily surrenders or is captured, the people's court shall retry the case. Where an offender is present court after the judgment or ruling has already taken legal effect, the people's court shall subject the offender to the execution of penalty. Prior to the execution of penalty, the people's court shall inform the offender of his/her right to raise objections to the judgment or ruling. If the offender raises objections to the judgment or ruling, the people's court shall retry the case.

Where the disposition of an offender's property under an effective

决、裁定提出异议。罪犯对判决、裁定提出异议的，人民法院应当重新审理。

judgment or ruling is indeed wrong, such property shall be returned, with compensation given.

依照生效判决、裁定对罪犯的财产进行的处理确有错误的，应当予以返还、赔偿。

**第二百九十六条** 因被告人患有严重疾病无法出庭，中止审理超过六个月，被告人仍无法出庭，被告人及其法定代理人、近亲属申请或者同意恢复审理的，人民法院可以在被告人不出庭的情况下缺席审理，依法作出判决。

**Article 296** In the event that the defendant is unable to appear in court due to serious illness and is still unable to appear in court after the proceedings are suspended for over six months, if the defendant and his/her agent ad litem or close relative applies for or consents to continuation of the trial, the people's court may hear the case in the absence of the defendant in court, and render a judgement in accordance with law.

**第二百九十七条** 被告人死亡的，人民法院应当裁定终止审理，但有证据证明被告人无罪，人民法院经缺席审理确认无罪的，应当依法作出判决。

**Article 297** Where the defendant dies, the people's court shall render a judgment terminating the trial; however, if there is evidence proving that the defendant is innocent, and the people's court confirms his/her innocence after conducting a trial in absentia, it shall render a judgement in accordance with law. For a case that the people's court retries under trial supervision procedures and the defendant dies, the people's court may conduct a trial in absentia and renders a judgement in accordance with law."

人民法院按照审判监督程序重新审判的案件，被告人死亡的，人民法院可以缺席审理，依法作出判决。

#### 第四章 犯罪嫌疑人、被告人逃匿、死亡案件违法所得的没收程序

#### Chapter IV Confiscation Procedures for Illegal Income in Cases Where a Criminal Suspect or Defendant Escapes or Dies

**第二百九十八条** 对于贪污贿赂犯罪、恐怖活动犯罪等重大犯罪案件，犯罪嫌疑人、被告人逃匿，在通缉一年后不能到案，或者犯罪嫌疑人、被告人死亡，依照刑法规定应当追缴其违法所得及其他涉案财产的，人民检察院可以向人民法院提出没收违法所得的申请。

**Article 298** Where, in a case regarding a significant crime such as embezzlement, bribery, or terrorist activities, a criminal suspect or defendant escapes and cannot be present in court after being wanted for a year, or a criminal suspect or defendant dies, if his/her illegal income and other property involved in the case shall be recovered in accordance with the Criminal Law, a people's procuratorate may file an application with a people's court for confiscation of illegal income. Deeming that the circumstances as mentioned in the preceding paragraph exist, a public security organ shall prepare a written opinion on confiscation of illegal income and transfer it to a people's procuratorate.

公安机关认为有前款规定情形的，应当写出没收违法所得意见书，移送人民检察院。

An application for confiscation of illegal income shall provide evidential materials related to the facts of a crime and illegal income and state the types, quantities, and locations of property as well as any seizure, impoundment, or freezing measures taken.

没收违法所得的申请应当提供与犯罪事实、违法所得相关的证据材料，并列明财产的种类、数量、所在地及查封、扣押、冻结的情况。

When necessary, a people's court may seize, impound, or freeze the property to be confiscated upon application.

人民法院在必要的时候，可以查封、扣押、冻结申请没收的财产。

**第二百九十九条** 没收违法所

得的申请，由犯罪地或者犯罪嫌疑人、被告人居住地的中级人民法院组成合议庭进行审理。

人民法院受理没收违法所得的申请后，应当发出公告。公告期间为六个月。犯罪嫌疑人、被告人的近亲属和其他利害关系人有权申请参加诉讼，也可以委托诉讼代理人参加诉讼。

人民法院在公告期满后对没收违法所得的申请进行审理。利害关系人参加诉讼的，人民法院应当开庭审理。

**第三百条** 人民法院经审理，

对经查证属于违法所得及其他涉案财产，除依法返还被害人的以外，应当裁定予以没收；对不属于应当追缴的财产的，应当裁定驳回申请，解除查封、扣押、冻结措施。

对于人民法院依照前款规定作出的裁定，犯罪嫌疑人、被告人的近亲属和其他利害关系人或者人民

**Article 299 An application for confiscation of illegal income shall be heard by a collegial panel formed by the intermediate people's court at the place of commission of a crime or place of residence of a criminal suspect or defendant.** After accepting an application for confiscation of illegal income, a people's court shall make a public announcement. The public announcement period shall be six months. The close relatives of a criminal suspect or defendant and other interested parties shall have the right to apply for participating in the procedure, and may retain agents ad litem to participate in the procedure.

A people's court shall hear an application for confiscation of illegal income upon expiration of the public announcement period. If any interested party participates in the procedure, the people's court shall hold a court session to hear the application.

**Article 300 A people's court shall render a ruling to confiscate illegal income and other property involved in the case that are confirmed at trial, except those legally returned to the victims; or, for property which shall not be recovered, shall render a ruling to dismiss the application and terminate the seizure, impound, or freezing measure taken.** Against a ruling rendered by a people's court under the preceding paragraph, the close relatives of a criminal suspect or defendant, other interested parties, or the people's procuratorate may appeal or protest.

检察院可以提出上诉、抗诉。

**第三百零一条** 在审理过程中，在逃的犯罪嫌疑人、被告人自动投案或者被抓获的，人民法院应当终止审理。

没收犯罪嫌疑人、被告人财产确有错误的，应当予以返还、赔偿。

**Article 301** Where a fugitive criminal suspect or defendant voluntarily surrenders himself or herself or is captured during the trial period, a people's court shall terminate the trial. Where the property of a criminal suspect or defendant is erroneously confiscated, such property shall be returned, and compensation shall be made.

## **第五章 依法不负刑事责任的精神病人的强制医疗程序**

## **Chapter V Procedures for Involuntary Medical Treatment of Mental Patients Legally Exempted from Criminal Liability**

**第三百零二条** 实施暴力行为，危害公共安全或者严重危害公民人身安全，经法定程序鉴定依法不负刑事责任的精神病人，有继续危害社会可能的，可以予以强制医疗。

**Article 302** A mental patient who has committed any violent behavior compromising public security or seriously endangering the personal safety of citizens and is legally exempted from criminal responsibility after evaluation under statutory procedures shall be subject to involuntary medical treatment if the mental patient may continue to endanger the society.

**第三百零三条** 根据本章规定对精神病人强制医疗的，由人民法院决定。

公安机关发现精神病人符合强制医疗条件的，应当写出强制医疗意见书，移送人民检察院。对于公

**Article 303** Whether a mental patient is subject to involuntary medical treatment under this Chapter shall be decided by a people's court. A public security organ which discovers that a mental patient meets the conditions for involuntary medical treatment shall prepare a written opinion on involuntary medical treatment, and transfer it to the people's procuratorate. For a written opinion on involuntary medical treatment transferred by a public security organ or after discovering that a mental patient meets the conditions for involuntary medical treatment in the process of examination and prosecution, a people's procuratorate

安机关移送的或者在审查起诉过程中发现的精神病人符合强制医疗条件的，人民检察院应当向人民法院提出强制医疗的申请。人民法院在审理案件过程中发现被告人符合强制医疗条件的，可以作出强制医疗的决定。

对实施暴力行为的精神病人，在人民法院决定强制医疗前，公安机关可以采取临时的保护性约束措施。

**第三百零四条** 人民法院受理强制医疗的申请后，应当组成合议庭进行审理。

人民法院审理强制医疗案件，应当通知被申请人或者被告人的法定代理人到场。被申请人或者被告人没有委托诉讼代理人的，人民法院应当通知法律援助机构指派律师为其提供法律帮助。

**第三百零五条** 人民法院经审理，对于被申请人或者被告人符合强制医疗条件的，应当在一个月以

shall file an application for involuntary medical treatment with a people's court. A people's court which discovers that a defendant meets the conditions for involuntary medical treatment in the process of trial of a case may make an involuntary medical treatment decision.

For a mental patient who has committed violent behavior, before a people's court makes an involuntary medical treatment decision, a public security organ may take interim protective restraint measures.

**Article 304** After accepting an application for involuntary medical treatment, a people's court shall form a collegial panel to try the case. In the trial of a case regarding involuntary medical treatment, a people's court shall notify the legal representative of the respondent or defendant to be present. If the respondent or defendant has not retained an agent ad litem, the people's court shall notify a legal aid agency to assign a lawyer to provide legal assistance for him/her.

**Article 305** Deeming at trial that the respondent or defendant meets the conditions for involuntary medical treatment, a people's court shall make an involuntary medical treatment decision within one month. Against an involuntary medical



内作出强制医疗的决定。

被决定强制医疗的人、被害人及其法定代理人、近亲属对强制医疗决定不服的，可以向上一级人民法院申请复议。

treatment decision, the person subject to involuntary medical treatment as decided, the victim, or the legal representative or close relative thereof may apply to the people's court at the next higher level for reconsideration.

### 第三百零六条 强制医疗机构

应当定期对被强制医疗的人进行诊断评估。对于已不具有人身危险性，不需要继续强制医疗的，应当及时提出解除意见，报决定强制医疗的人民法院批准。

被强制医疗的人及其近亲属有权申请解除强制医疗。

**Article 306 Involuntary medical treatment institutions shall regularly diagnose and assess persons subject to involuntary medical treatment. For those who are no longer dangerous to personal safety and no longer need involuntary medical treatment, involuntary medical treatment institutions shall prepare opinions on termination of involuntary medical treatment in a timely manner and report such opinions to the people's court which made the involuntary medical treatment decisions for approval.** Persons subject to involuntary medical treatment and their close relatives shall have the right to apply for termination of involuntary medical treatment.

### 第三百零七条 人民检察院对

强制医疗的决定和执行实行监督。

**Article 307 A people's procuratorate shall oversee decisions and execution of involuntary medical treatment.**

### 附则

### Supplementary Provisions

### 第三百零八条 军队保卫部门

对军队内部发生的刑事案件行使侦查权。

**Article 308 The military security authorities may exercise the right to investigate the criminal cases occurring in the military.** The China Coast Guard shall fulfill the marine right safeguarding and law enforcement and exercise the right to investigate the criminal cases occurring at sea.

中国海警局履行海上维权执法职责，对海上发生的刑事案件行使

Crimes committed by criminals within the prisons shall be investigated by prisons.



侦查权。

The relevant provisions of this Law shall be applicable to criminal cases dealt with by the military security authorities, the China Coast Guard and prisons.

对罪犯在监狱内犯罪的案件由  
监狱进行侦查。

军队保卫部门、中国海警局、  
监狱办理刑事案件，适用本法的有  
关规定。



扫一扫，手机阅读更方便

# **Exhibit B-4**

中华人民共和国民事诉讼法（2023 修正）

发 文 机 关：	全国人民代表大会常务委员会	Promulgated by:	Standing Committee of the National People's Congress
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中华人民共和国民事诉讼法

（1991 年 4 月 9 日第七届全国人民代表大会第四次会议通过根据 2007 年 10 月 28 日第十届全国人民代表大会常务委员会第三十次会议《关于修改〈中华人民共和国民事诉讼法〉的决定》第一次修正根据 2012 年 8 月 31 日第十一届全国人民代表大会常务委员会第二十八次会议《关于修改〈中华人民共和国民事诉讼法〉的决定》第二次修正根据 2017 年 6 月 27 日第十二届全国人民代表大会常务委员会第二十八次会议《关于修改〈中华人民共和国民事诉讼法〉和〈中华人民共和国行政诉讼法〉的决定》第三次修正根据 2021 年 12 月 24 日第十三届全国人民代表大会常务委员会

Civil Procedure Law of the People's Republic of China  
(Amended in 2023)

(Adopted at the Fourth Session of the Seventh National People's Congress on April 9, 1991, amended for the first time pursuant to the Decision on Amending the Civil Procedure Law of the People's Republic of China at the Thirtieth Session of the Standing Committee of the Tenth National People's Congress on October 28, 2007, amended for the second time pursuant to and the Decision on Amending the Civil Procedure Law of the People's Republic of China at the Twenty-eighth Session of the Standing Committee of the Eleventh National People's Congress on August 31, 2012, amended for the third time pursuant to the Decision on Amending the Civil Procedure Law of the People's Republic of China at the Twenty-eighth Session of the Standing Committee of the Twelfth National People's Congress on June 27, 2017, amended for the fourth time pursuant to the Decision on Amending the Civil Procedure Law of the People's Republic of China at the Thirty-second Session of the Standing Committee of the Thirteenth National People's Congress on December 24, 2021, and amended for the fifth time pursuant to the Decision on Amending the Civil Procedure Law of the People's Republic of China at the Fifth Session of the Standing Committee of the Fourteenth National People's Congress on September 1, 2023)

第三十二次会议《关于修改〈中华人民共和国民事诉讼法〉的决定》  
第四次修正根据 2023 年 9 月 1 日  
第十四届全国人民代表大会常务委  
员会第五次会议《关于修改〈中华  
人民共和国民事诉讼法〉的决定》  
第五次修正）

## 第一编 总 则

## PART I GENERAL PRINCIPLES

### 第一章 任务、适用范围和基本 原则

### Chapter 1 Tasks, Scope of Application and Basic Principles

**第一条** 中华人民共和国民事诉讼法以宪法为根据，结合我国民事审判工作的经验和实际情况制定。

**Article 1** The Civil Procedure Law of the People's Republic of China is enacted based on the Constitution and taking into account the civil trial practice and experience and actual conditions in China.

**第二条** 中华人民共和国民事诉讼法的任务，是保护当事人行使诉讼权利，保证人民法院查明事实，分清是非，正确适用法律，及时审理民事案件，确认民事权利义务关系，制裁民事违法行为，保护当事人的合法权益，教育公民自觉遵守法律，维护社会秩序、经济秩序，保障社会主义建设事业顺利进

**Article 2** The tasks of the Civil Procedure Law of the People's Republic of China are protection of the rights of litigants for exercise of litigation rights, ensuring ascertainment of facts and distinguishing between right and wrong by People's Courts, correct application of laws, prompt trial of civil cases, confirmation of civil rights and obligations, sanction of civil offences, protection of legitimate rights and interests of litigants, educating citizens to comply with the law voluntarily, safeguarding social order and economic order, safeguarding the smooth development of socialism.

行。

**第三条** 人民法院受理公民之间、法人之间、其他组织之间以及他们相互之间因财产关系和人身关系提起的民事诉讼，适用本法的规定。

**第四条** 凡在中华人民共和国领域内进行民事诉讼，必须遵守本法。

**第五条** 外国人、无国籍人、外国企业和组织在人民法院起诉、应诉，同中华人民共和国公民、法人和其他组织有同等的诉讼权利义务。

外国法院对中华人民共和国公民、法人和其他组织的民事诉讼权利加以限制的，中华人民共和国人民法院对该国公民、企业和组织的民事诉讼权利，实行对等原则。

**第六条** 民事案件的审判权由人民法院行使。

人民法院依照法律规定对民事

**Article 3** This Law shall apply to acceptance by People's Courts of civil lawsuits arising from property relationship and personal relationship between citizens, between legal persons, between other organisations, as well as mutually between the aforesaid groups.

**Article 4** Civil lawsuits within the territory of the People's Republic of China shall be in compliance with this Law.

**Article 5** Foreigners, stateless persons, foreign enterprises and organisations filing a lawsuit or responding to a lawsuit in a People's Court shall have equal litigation rights and obligations as citizens, legal persons and other organisations of the People's Republic of China. Where a foreign court restricts the civil litigation rights of citizens, legal persons and other organisations of the People's Republic of China, People's Courts of the People's Republic of China will follow the principle of reciprocity for civil litigation rights of citizens, enterprises and organisations of that country.

**Article 6** People's Courts may exercise the right to try civil cases. People's Courts shall try civil cases independently pursuant to the provisions of the law and shall not be interfered by administrative authorities, social bodies and individuals.

案件独立进行审判，不受行政机关、社会团体和个人的干涉。

**第七条** 人民法院审理民事案件，必须以事实为根据，以法律为准绳。

**第八条** 民事诉讼当事人有平等的诉讼权利。人民法院审理民事案件，应当保障和便利当事人行使诉讼权利，对当事人在适用法律上一律平等。

**第九条** 人民法院审理民事案件，应当根据自愿和合法的原则进行调解；调解不成的，应当及时判决。

**第十条** 人民法院审理民事案件，依照法律规定实行合议、回避、公开审判和两审终审制度。

**第十一条** 各民族公民都有用本民族语言、文字进行民事诉讼的权利。

在少数民族聚居或者多民族共同居住的地区，人民法院应当用当

**Article 7 People's Courts shall try civil cases based on facts and with the law as the criterion.**

**Article 8 Litigants of civil lawsuits have equal litigation rights. People's Courts trying civil cases shall ensure and facilitate exercise of litigation rights by litigants and treat all litigants equally in the application of law.**

**Article 9 People's Courts trying civil cases shall carry out mediation pursuant to the principles of voluntary participation and legitimacy; where mediation is unsuccessful, the People's Court concerned shall promptly try and rule on the lawsuit.**

**Article 10 People's Courts trying civil cases shall implement the system of collegiate bench, recusal, open trial and trial of second instance being final pursuant to the provisions of the law.**

**Article 11 Citizens of all ethnic groups have the right to use their ethnic language and text in civil lawsuits.** In regions inhabited by ethnic minorities or several ethnic groups, People's Courts shall use the common language and text of the local ethnic groups in trial of lawsuits and promulgation of legal documents.

People's Courts shall provide interpretation for participants in proceedings who are not proficient in the common language and

地民族通用的语言、文字进行审理和发布法律文书。

text of the local ethnic groups.

人民法院应当对不通晓当地民族通用的语言、文字的诉讼参与人提供翻译。

**第十二条** 人民法院审理民事案件时，当事人有权进行辩论。

**Article 12** When a People's Court tries a civil case, the litigants have the right to make argument.

**第十三条** 民事诉讼应当遵循诚信原则。

**Article 13** Civil lawsuits shall follow the principles of good faith. Litigants have the right to handle their civil rights and litigation rights within the scope stipulated by the law.

当事人有权在法律规定的范围内处分自己的民事权利和诉讼权利。

**第十四条** 人民检察院有权对民事诉讼实行法律监督。

**Article 14** People's Procuratorates have the right to carry out legal supervision for civil lawsuits.

**第十五条** 机关、社会团体、企业事业单位对损害国家、集体或者个人民事权益的行为，可以支持受损害的单位或者个人向人民法院起诉。

**Article 15** Agencies, social bodies, enterprises and institutions may support aggrieved organisation(s) or individual(s) to file a lawsuit with a People's Court in respect of any act which harms State, collective or individual civil rights and interests.

**第十六条** 经当事人同意，民事诉讼活动可以通过信息网络平台

**Article 16** Upon consent of the parties concerned, civil litigation activities may be carried out online through information network platforms. Civil litigation activities carried out online through information network platforms shall have the

在线进行。

民事诉讼活动通过信息网络平台在线进行的，与线下诉讼活动具有同等法律效力。

same legal effect as offline litigation activities.

**第十七条** 民族自治地方的人民代表大会根据宪法和本法的原则，结合当地民族的具体情况，可以制定变通或者补充的规定。自治区的规定，报全国人民代表大会常务委员会批准。自治州、自治县的规定，报省或者自治区的人民代表大会常务委员会批准，并报全国人民代表大会常务委员会备案。

**Article 17** People's Congresses of autonomous areas may, pursuant to the principles of the Constitution and this Law, taking into account the specific circumstances of local ethnic groups, formulate modification or supplementary provisions. The provisions of autonomous regions shall be subject to approval by the Standing Committee of the National People's Congress. The provisions of autonomous prefectures and autonomous counties shall be subject to approval by the Standing Committee of the People's Congress of the province or autonomous region and filed with the Standing Committee of the National People's Congress for record.

**第二章 管 辖**

**Chapter 2 — Jurisdiction**

**第一节 级别管辖**

**Section 1 — Hierarchical jurisdiction**

**第十八条** 基层人民法院管辖第一审民事案件，但本法另有规定的除外。

**Article 18** Unless otherwise stipulated in this Law, primary People's Courts have jurisdiction over trial of first instance for civil cases.

**第十九条** 中级人民法院管辖下列第一审民事案件：

**Article 19** Intermediate People's Courts have jurisdiction over trial of first instance for the following civil cases: (1) Major foreign-related cases;

（一）重大涉外案件；

(2) Cases which have a significant impact on their jurisdiction; and



（二）在本辖区有重大影响的案件；

(3) Cases for which intermediate People's Courts have jurisdiction as determined by the Supreme People's Court.

（三）最高人民法院确定由中级人民法院管辖的案件。

**第二十条** 高级人民法院管辖在本辖区有重大影响的第一审民事案件。

**Article 20 High People's Courts have jurisdiction over trial of first instance for civil cases which have a significant impact on their jurisdiction.**

**第二十一条** 最高人民法院管辖下列第一审民事案件：

**Article 21 The Supreme People's Court has jurisdiction over trial of first instance for the following civil cases:** (1) cases which have a significant impact nationwide; and

（一）在全国有重大影响的案件；

(2) cases for which the Supreme People's Court deemed that it should try.

（二）认为应当由本院审理的案件。

**第二节 地域管辖**

**Section 2 — Territorial Jurisdiction**

**第二十二条** 对公民提起的民事诉讼，由被告住所地人民法院管辖；被告住所地与经常居住地不一致的，由经常居住地人民法院管辖。

**Article 22 With respect to a civil lawsuit filed by a citizen, the People's Court at the location of the Defendant's domicile has jurisdiction; where the domicile and habitual residence of the Defendant are different, the People's Court at the location of habitual residence shall have jurisdiction.** With respect to a civil lawsuit filed by a legal person or an organisation, the People's Court at the location of the Defendant's domicile shall have jurisdiction.

对法人或者其他组织提起的民事诉讼，由被告住所地人民法院管

Where there are two or more locations of domicile and habitual residence of several Defendants in a lawsuit which fall under the

辖。

jurisdictions of two or more People's Courts, all the People's Courts shall have jurisdiction.

同一诉讼的几个被告住所地、经常居住地在两个以上人民法院辖区的，各该人民法院都有管辖权。

**第二十三条** 下列民事诉讼，

由原告住所地人民法院管辖；原告住所地与经常居住地不一致的，由原告经常居住地人民法院管辖：

（一）对不在中华人民共和国领域内居住的人提起的有关身份关系的诉讼；

（二）对下落不明或者宣告失踪的人提起的有关身份关系的诉讼；

（三）对被采取强制性教育措施的人提起的诉讼；

（四）对被监禁的人提起的诉讼。

**Article 23 The People's Court at the location of the Plaintiff's domicile has jurisdiction over the following civil lawsuits; where the domicile and habitual residence of the Plaintiff are different, the People's Court at the location of habitual residence of the Plaintiff shall have jurisdiction:** (1) A lawsuit regarding identity relationship filed against a person who does not reside in the People's Republic of China;

(2) A lawsuit regarding identity relationship filed against a missing or declared missing person;

(3) A lawsuit filed against a person who is subject to mandatory education measures; and

(4) A lawsuit filed against a person under imprisonment.

**第二十四条** 因合同纠纷提起

的诉讼，由被告住所地或者合同履行地人民法院管辖。

**Article 24 With respect to a contract dispute lawsuit, the People's Court at the location of the Defendant's domicile or place of performance of contract shall have jurisdiction.**

**第二十五条** 因保险合同纠纷提起的诉讼，由被告住所地或者保险标的物所在地人民法院管辖。

**Article 25** With respect to an insurance contract dispute lawsuit, the People's Court at the location of the Defendant's domicile or the insurance subject matter shall have jurisdiction.

**第二十六条** 因票据纠纷提起的诉讼，由票据支付地或者被告住所地人民法院管辖。

**Article 26** With respect to a bill dispute lawsuit, the People's Court at the place of payment of bill or the Defendant's domicile shall have jurisdiction.

**第二十七条** 因公司设立、确认股东资格、分配利润、解散等纠纷提起的诉讼，由公司住所地人民法院管辖。

**Article 27** With respect to a lawsuit regarding a dispute over incorporation of company, confirmation of shareholder qualification, profit distribution, dissolution, etc., the People's Court at the company's domicile shall have jurisdiction.

**第二十八条** 因铁路、公路、水上、航空运输和联合运输合同纠纷提起的诉讼，由运输始发地、目的地或者被告住所地人民法院管辖。

**Article 28** With respect to a contract dispute lawsuit regarding railway, highway, maritime, air transport and combined transport, the People's Court at the place of origin and place of destination of transport or the Defendant's domicile shall have jurisdiction.

**第二十九条** 因侵权行为提起的诉讼，由侵权行为地或者被告住所地人民法院管辖。

**Article 29** With respect to a tort lawsuit, the People's Court at the place of occurrence of tortious act or the Defendant's domicile shall have jurisdiction.

**第三十条** 因铁路、公路、水上和航空事故请求损害赔偿提起的诉讼，由事故发生地或者车辆、船舶最先到达地、航空器最先降落地

**Article 30** With respect to a lawsuit regarding claim of damages in a railway, highway, maritime and aviation accident, the People's Court at the place of occurrence of accident or the place of first arrival of vehicle or vessel, place of first landing of aircraft or the Defendant's domicile shall have jurisdiction.

或者被告住所地人民法院管辖。

**第三十一条** 因船舶碰撞或者其他海事损害事故请求损害赔偿提起的诉讼，由碰撞发生地、碰撞船舶最先到达地、加害船舶被扣留地或者被告住所地人民法院管辖。

**Article 31** With respect to a lawsuit regarding claim of damages in a vessel collision or other maritime injury accident, the People's Court at the place of occurrence of collision, the place of first arrival of the collided vessel, place of detention of the colliding vessel or the Defendant's domicile shall have jurisdiction.

**第三十二条** 因海难救助费用提起的诉讼，由救助地或者被救助船舶最先到达地人民法院管辖。

**Article 32** With respect to a lawsuit regarding maritime salvage expenses, the People's Court at the place of salvage or the place of first arrival of the salvaged vessel shall have jurisdiction.

**第三十三条** 因共同海损提起的诉讼，由船舶最先到达地、共同海损理算地或者航程终止地的人民法院管辖。

**Article 33** With respect to a lawsuit regarding common averages, the People's Court at the place of first arrival of the vessel, the place of adjustment of common averages or the place of termination of voyage shall have jurisdiction.

**第三十四条** 下列案件，由本条规定的人民法院专属管辖：

**Article 34** People's Courts stipulated in this Article shall have exclusive jurisdiction for the following cases: (1) With respect to a real estate dispute lawsuit, the People's Court at the location of the real estate has jurisdiction;

（一）因不动产纠纷提起的诉讼，由不动产所在地人民法院管辖；

(2) With respect to a lawsuit regarding a dispute arising in port operations, the People's Court at the location of the port has jurisdiction; and

（二）因港口作业中发生纠纷提起的诉讼，由港口所在地人民法院管辖；

(3) With respect to an inheritance dispute lawsuit, the People's Court at the decedent's domicile at the time of death or the location of the main legacy has jurisdiction.

（三）因继承遗产纠纷提起的诉讼，由被继承人死亡时住所地或者主要遗产所在地人民法院管辖。

**第三十五条** 合同或者其他财产权益纠纷的当事人可以书面协议选择被告住所地、合同履行地、合同签订地、原告住所地、标的物所在地等与争议有实际联系的地点的人民法院管辖，但不得违反本法对级别管辖和专属管辖的规定。

**Article 35** The litigants of a contract dispute or other property rights dispute may agree in writing on selection of the People's Court at the location of the Defendant's domicile, place of performance of contract, place of execution of contract, address of the Plaintiff, location of the subject matter, etc. or a venue which has actual connection with the dispute to be the People's Court which has jurisdiction, but shall not violate the provisions hereof on grade jurisdiction and exclusive jurisdiction.

**第三十六条** 两个以上人民法院都有管辖权的诉讼，原告可以向其中一个人民法院起诉；原告向两个以上有管辖权的人民法院起诉的，由最先立案的人民法院管辖。

**Article 36** With respect to a lawsuit for which two or more People's Courts have jurisdiction, the Plaintiff may file a lawsuit with any of the People's Courts; where the Plaintiff has filed a lawsuit with two or more People's Courts with jurisdiction, the People's Court which has filed the case first shall have jurisdiction.

### 第三节 移送管辖和指定管辖

### Section 3 — Referral and Designation of Jurisdiction

**第三十七条** 人民法院发现受理的案件不属于本院管辖的，应当移送有管辖权的人民法院，受移送的人民法院应当受理。受移送的人民法院认为受移送的案件依照规定不属于本院管辖的，应当报请上级人民法院指定管辖，不得再自行移

**Article 37** Where a People's Court becomes aware that a case it has accepted does not fall under its jurisdiction, the case shall be referred to the People's Court with jurisdiction, the People's Court to which the case is referred shall accept the case. Where the case being referred is deemed by the People's Court to which the case is referred to not fall under its jurisdiction pursuant to the provisions, it shall request the higher-level People's Court to designate jurisdiction, and no further referral is allowed.

送。

**第三十八条** 有管辖权的人民法院由于特殊原因，不能行使管辖权的，由上级人民法院指定管辖。

人民法院之间因管辖权发生争议，由争议双方协商解决；协商解决不了的，报请它们的共同上级人民法院指定管辖。

**Article 38** Where a People's Court with jurisdiction is unable to exercise jurisdiction due to a special reason, the higher-level People's Court shall designate jurisdiction. Where there is a dispute over jurisdiction between People's Courts, the dispute parties shall negotiate and resolve the dispute; where negotiation is unsuccessful, the People's Courts shall request their common higher-level People's Court to designate jurisdiction.

**第三十九条** 上级人民法院有权审理下级人民法院管辖的第一审民事案件；确有必要将本院管辖的第一审民事案件交下级人民法院审理的，应当报请其上级人民法院批准。

下级人民法院对它所管辖的第一审民事案件，认为需要由上级人民法院审理的，可以报请上级人民法院审理。

**Article 39** The higher-level People's Court shall have the right to try civil cases for which its lower-level People's Court has jurisdiction over trial of first instance; where it is genuinely necessary for a People's Court to pass a civil case for which it has jurisdiction over trial of first instance to a lower-level People's Court for trial, the People's Court shall obtain approval from its higher-level People's Court. Where the lower-level People's Court deems that it is necessary for the higher-level People's Court to try a civil case for which it has jurisdiction over trial of first instance, it may request the higher-level People's Court to try the case.

**第三章 审判组织**

**Chapter 3 — Trial Organisation**

**第四十条** 人民法院审理第一审民事案件，由审判员、人民陪审员共同组成合议庭或者由审判员组

**Article 40** When a People's court hears a civil case of the first instance, a collegial panel shall be formed jointly by the trial judge and people's assessors or by the trial judge alone. The number of members of a collegial panel must be an odd

成合议庭。合议庭的成员人数，必须是单数。

适用简易程序审理的民事案件，由审判员一人独任审理。基层人民法院审理的基本事实清楚、权利义务关系明确的第一审民事案件，可以由审判员一人适用普通程序独任审理。

人民陪审员在参加审判活动时，除法律另有规定外，与审判员有同等的权利义务。

**第四十一条** 人民法院审理第二审民事案件，由审判员组成合议庭。合议庭的成员人数，必须是单数。

中级人民法院对第一审适用简易程序审结或者不服裁定提起上诉的第二审民事案件，事实清楚、权利义务关系明确的，经双方当事人同意，可以由审判员一人独任审理。

发回重审的案件，原审人民法

**number.** Civil cases to which summary procedure is applied shall be tried by a single judge alone. Civil cases of first instance with clear basic facts and clarified relationship of rights and obligations heard by a primary people's court may be tried by a sole judge under the general procedure.

When participating in judicial activities, the people's assessors shall have equal rights and obligations as the judges, unless otherwise stipulated by the law.

**Article 41** When a People's court hears a civil case of the second instance, the judges shall constitute a collegiate bench. The number of collegiate bench members shall be odd number. For a civil case of second instance with clear facts and explicit relationship of rights and obligations which is concluded in the first instance under summary procedures or a civil case of second instance where an appeal is made against a ruling, the intermediate people's court may have a single judge alone try it with consent of both parties concerned.

With respect to a remanded case, the People's Court which originally heard the case shall form a collegiate bench separately pursuant to the procedures for trial of first instance.

With respect to a re-trial of case, where the case was originally tried in the first instance, a collegiate bench shall be formed separately pursuant to the procedures for trial of first instance; where the case was originally tried in the second instance or arraigned by the higher-level People's Court, a collegiate bench



院应当按照第一审程序另行组成合议庭。

审理再审案件，原来是第一审的，按照第一审程序另行组成合议庭；原来是第二审的或者是上级人民法院提审的，按照第二审程序另行组成合议庭。

shall be formed separately pursuant to the procedures for trial of second instance.

**第四十二条** 人民法院审理下列民事案件，不得由审判员一人独任审理：

（一）涉及国家利益、社会公共利益案件；

（二）涉及群体性纠纷，可能影响社会稳定的案件；

（三）人民群众广泛关注或者其他社会影响较大的案件；

（四）属于新类型或者疑难复杂的案件；

（五）法律规定应当组成合议庭审理的案件；

**Article 42** The following civil cases to be tried by a people's court shall not be tried by a single judge alone: (1) cases

involving national interests or public interests;

(2) cases involving group disputes which may affect social stability;

(3) cases which attract widespread public attention or have other significant social impact;

(4) cases of a new type or complex nature;

(5) cases for which the law stipulates that a collegial panel shall be formed for trial; and

(6) other cases which are not appropriate to be tried by a single judge alone.



（六）其他不宜由审判员一人

独任审理的案件。

**第四十三条** 人民法院在审理过程中，发现案件不宜由审判员一人独任审理的，应当裁定转由合议庭审理。

当事人认为案件由审判员一人独任审理违反法律规定的，可以向人民法院提出异议。人民法院对当事人提出的异议应当审查，异议成立的，裁定转由合议庭审理；异议不成立的，裁定驳回。

**Article 43** Where a People's Court discovers in the course of trial that a case is not appropriate to be tried by a single judge alone, it shall rule to refer the case to a collegial panel for trial. Where a litigant believes that trial of the case by a single judge alone violates the provisions of the law, it may raise an objection to the people's court. The People's Court shall examine the objection raised by the party. If the objection is tenable, the People's Court shall rule to refer the case to a collegial panel for trial; if the objection is untenable, the objection shall be rejected.

**第四十四条** 合议庭的审判长由院长或者庭长指定审判员一人担任；院长或者庭长参加审判的，由院长或者庭长担任。

**Article 44** The president of the court or the judge appointed by the presiding judge shall act as the presiding judge of a collegiate bench; where the president of the court or the presiding judge participates in the trial, the president of the court or the presiding judge shall act as the presiding judge of a collegiate bench.

**第四十五条** 合议庭评议案件，实行少数服从多数的原则。评议应当制作笔录，由合议庭成员签名。评议中的不同意见，必须如实记入笔录。

**Article 45** A collegiate bench deliberating a case shall implement the principle of majority rules. Minutes of deliberation shall be prepared, and members of the collegiate bench shall sign thereon. Different views in the deliberation shall be truthfully recorded in the minutes.

**第四十六条** 审判人员应当依

**Article 46** Judges shall try cases impartially pursuant to the law. Judges shall not accept treats or gifts from litigants and their

法秉公办案。

agent ad litem.

审判人员不得接受当事人及其  
诉讼代理人请客送礼。

For judges guilty of accepting bribery and corruption, perverting the law, legal liability shall be pursued in accordance with the law; where the case constitutes a criminal offence, criminal liability shall be pursued in accordance with the law.

审判人员有贪污受贿，徇私舞弊，枉法裁判行为的，应当追究法律责任；构成犯罪的，依法追究刑事责任。

#### 第四章 回避

#### Chapter 4 — Recusal

**第四十七条** 审判人员有下列情形之一的，应当自行回避，当事人有权用口头或者书面方式申请他们回避：

**Article 47** Under any of the following circumstances, a judge shall recuse himself/herself from the case voluntarily, and the litigants shall have the right to apply for recusal of a judge verbally or in writing: (1) The judge is a litigant of the case or a close relative of a litigant or an agent ad litem of the case;

(2) The judge is an interested party of the case; or

（一）是本案当事人或者当事人、诉讼代理人近亲属的；

(3) The judge is otherwise related to a litigant or an agent ad litem of the case, which may influence a fair trial of the case.

（二）与本案有利害关系的；

Where a judge has accepted treats or gifts from a litigant or an agent ad litem or met with a litigant or an agent ad litem in violation of the provisions, the litigants have the right to request for recusal of the judge.

（三）与本案当事人、诉讼代理人有其他关系，可能影响对案件公正审理的。

For judges which have committed any of the acts stipulated in the preceding paragraph, legal liability shall be pursued in accordance with the law.

审判人员接受当事人、诉讼代理人请客送礼，或者违反规定会见当事人、诉讼代理人的，当事人有

The provisions of the preceding three paragraphs shall apply to judge assistants, court clerks, judicial technicians, translators/interpreters, expert witnesses and inspectors.

权要求他们回避。

审判人员有前款规定的行为的，应当依法追究法律责任。

前三款规定，适用于法官助理、书记员、司法技术人员、翻译人员、鉴定人、勘验人。

**第四十八条** 当事人提出回避申请，应当说明理由，在案件开始审理时提出；回避事由在案件开始审理后知道的，也可以在法庭辩论终结前提出。

被申请回避的人员在人民法院作出是否回避的决定前，应当暂停参与本案的工作，但案件需要采取紧急措施的除外。

**第四十九条** 院长担任审判长或者独任审判员时的回避，由审判委员会决定；审判人员的回避，由院长决定；其他人员的回避，由审判长或者独任审判员决定。

**第五十条** 人民法院对当事人提出的回避申请，应当在申请提出

**Article 48** A litigant who applies for recusal of a judge shall state the reason, and makes the application at the time of commencement of trial of the case; where a litigant becomes aware of the fact for recusal upon commencement of trial of the case, the application for recusal may be made before the end of court debate. Before the People's Court makes a decision on recusal or non-recusal, the person for which an application for recusal is being made shall stop participating in the case, except where there is a need to adopt emergency measures for the case.

**Article 49** Recusal of the president of the court who acts as the presiding judge or the sole judge shall be decided by the Adjudication Committee; recusal of a judge shall be decided by the president of the court; recusal of any other person shall be decided by the presiding judge or the sole judge.

**Article 50** A People's Court shall make a decision verbally or in writing within three days from the date of the application for recusal made by a litigant. Where the applicant disagrees with

的三日内，以口头或者书面形式作出决定。申请人对决定不服的，可以在接到决定时申请复议一次。复议期间，被申请回避的人员，不停止参与本案的工作。人民法院对复议申请，应当在三日内作出复议决定，并通知复议申请人。

**the decision, an application for review may be submitted at the time of receipt of the decision. During the review period, the person for which the application for recusal is being made shall not stop participating in the case. The People's Court shall make a review decision within three days from the application for review and notify the review applicant.**

## 第五章 诉讼参加人

## Chapter 5 — Participants in Proceedings

### 第一节 当事人

### Section 1 — Litigants

**第五十一条** 公民、法人和其他组织可以作为民事诉讼的当事人。

**Article 51 Citizens, legal persons and other organisations may act as litigants in civil lawsuits.** Legal persons are litigated by their legal representatives. Other organizations are litigated by their principal officers.

法人由其法定代表人进行诉讼。其他组织由其主要负责人进行诉讼。

**第五十二条** 当事人有权委托代理人，提出回避申请，收集、提供证据，进行辩论，请求调解，提起上诉，申请执行。

**Article 52 Litigants shall have the right to appoint an agent, submit an application for recusal, gather and provide evidence, participate in debate, request for mediation, submit an appeal, apply for enforcement.** A litigant may inspect the relevant materials of the case and make copies of the relevant materials and legal documents of the case. The scope and methods for inspection and replication of the relevant materials of cases shall be stipulated by the Supreme People's Court.

当事人可以查阅本案有关材料，并可以复制本案有关材料和法律文书。查阅、复制本案有关材料

A litigant shall exercise litigation rights pursuant to the law, comply with the order of litigation, perform the written judgment, ruling

的范围和办法由最高人民法院规定。

当事人必须依法行使诉讼权利，遵守诉讼秩序，履行发生法律效力的判决书、裁定书和调解书。

document or mediation document which has taken legal effect.

**第五十三条** 双方当事人可以

自行和解。

**Article 53** The litigants can settle on their own.

**第五十四条** 原告可以放弃或

者变更诉讼请求。被告可以承认或者反驳诉讼请求，有权提起反诉。

**Article 54** A Plaintiff may waive or amend a claim. The Defendant may acknowledge or refute a claim and has the right to file a counterclaim.

**第五十五条** 当事人一方或者

双方为二人以上，其诉讼标的是共同的，或者诉讼标的是同一种类、人民法院认为可以合并审理并经当事人同意的，为共同诉讼。

**Article 55** Where a party or both parties to a lawsuit comprise(s) two or more persons, and the subject matter of litigation is common, or the subject matters of litigation are the same type, the People's Court deemed that the lawsuit may be tried as a joint action, the Court may try the lawsuit as a joint action upon consent by the litigants. Where a party to a joint action has common rights and obligations pertaining to the subject matter of litigation, where the litigation actions of one litigant are acknowledged by the other joint litigant(s), the actions shall be binding upon the other joint litigant(s); where there is no common rights and obligations pertaining to the subject matter of litigation, the litigation actions of one litigant shall not be binding upon the other joint litigant(s).

共同诉讼的一方当事人对诉讼标的有共同权利义务的，其中一人的诉讼行为经其他共同诉讼人承认，对其他共同诉讼人发生法律效力；对诉讼标的没有共同权利义务的，其中一人的诉讼行为对其他共同诉讼人不发生法律效力。

**第五十六条** 当事人一方人数

众多的共同诉讼，可以由当事人推选代表人进行诉讼。代表人的诉讼行为对其所代表的当事人发生法律效力，但代表人变更、放弃诉讼请求或者承认对方当事人的诉讼请求，进行和解，必须经被代表的当事人同意。

**Article 56** With respect to a joint action where there are multiple persons comprising one party to the lawsuit, the litigants may elect a representative to participate in the proceedings. The litigation actions of the representative shall be binding upon the litigants he/she represents; for change of representative, waiver of the claims of the action or confirmation of the claims of the counterparty litigants, settlement, the consent by the litigants he/she represents is required.

**第五十七条** 诉讼标的是同一

种类、当事人一方人数众多在起诉时人数尚未确定的，人民法院可以发出公告，说明案件情况和诉讼请求，通知权利人在一定期间向人民法院登记。

**Article 57** Where the subject matter of litigation is common, there are multiple persons comprising one party to the lawsuit but the number of persons is not confirmed at the time of filing of lawsuit, the People's Court may issue a public announcement, stating the facts of the case and the claims, and notify the rights holders to register with the People's Court within a stipulated period. Rights holders registered with the People's Court may elect a representative to participate in the proceedings; where a representative is not elected, the People's Court may discuss with the registered rights holders to appoint a representative.

向人民法院登记的权利人可以推选代表人进行诉讼；推选不出代表人的，人民法院可以与参加登记的权利人商定代表人。

The litigation actions of the representative shall be binding upon the litigants he/she represents; for change of representative, waiver of the claims of the action or confirmation of the claims of the counterparty litigants, settlement, the consent of the litigants he/she represents is required.

代表人的诉讼行为对其所代表的当事人发生法律效力，但代表人变更、放弃诉讼请求或者承认对方当事人的诉讼请求，进行和解，必须经被代表的当事人同意。

The judgment or ruling made by the People's Court shall be binding upon all the registered rights holders. The said judgment or ruling shall apply to unregistered rights holders who have filed a lawsuit within the limitation of action.

人民法院作出的判决、裁定，  
对参加登记的全体权利人发生效力。未参加登记的权利人在诉讼时  
效期间提起诉讼的，适用该判决、  
裁定。

**第五十八条** 对污染环境、侵害众多消费者合法权益等损害社会公共利益的行为，法律规定的机关和有关组织可以向人民法院提起诉讼。

人民检察院在履行职责中发现破坏生态环境和资源保护、食品药品安全领域侵害众多消费者合法权益等损害社会公共利益的行为，在没有前款规定的机关和组织或者前款规定的机关和组织不提起诉讼的情况下，可以向人民法院提起诉讼。前款规定的机关或者组织提起诉讼的，人民检察院可以支持起诉。

**第五十九条** 对当事人双方的诉讼标的，第三人认为有独立请求权的，有权提起诉讼。

**Article 58** For acts which harm public interest such as environmental pollution, infringement of the legitimate rights and interests of multiple consumers, etc., the authorities stipulated by the law and the relevant organisations may file a lawsuit with a People's Court. Where a People's Procuratorate discovers in the course of performing its duties any act which compromises public interests, such as damage to the ecological environment and resource protection, infringement upon the legitimate rights and interests of multiple consumers in terms of food and drug safety, in the absence of the authorities or organisations mentioned in the preceding paragraph or where the authorities or organisations mentioned in the preceding paragraph do not file a lawsuit, the people's procuratorate may file a lawsuit with a People's Court. If the authorities or organisations mentioned in the preceding paragraph have filed a lawsuit, the People's Procuratorate may support the lawsuit.

**Article 59** Where a third party deemed that it has independent right of claim to a subject matter of litigation between two parties concerned, the third party shall have the right to file a lawsuit. Where a third party does not have independent right of claim to a subject matter of litigation between two parties



对当事人双方的诉讼标的，第三人虽然没有独立请求权，但案件处理结果同他有法律上的利害关系的，可以申请参加诉讼，或者由人民法院通知他参加诉讼。人民法院判决承担民事责任的第三人，有当事人的诉讼权利义务。

前两款规定的第三人，因不能归责于本人的事由未参加诉讼，但有证据证明发生法律效力的判决、裁定、调解书的部分或者全部内容错误，损害其民事权益的，可以自知道或者应当知道其民事权益受到损害之日起六个月内，向作出该判决、裁定、调解书的人民法院提起诉讼。人民法院经审理，诉讼请求成立的，应当改变或者撤销原判决、裁定、调解书；诉讼请求不成立的，驳回诉讼请求。

concerned, but it has legal stake in the handling outcome of the case, it may apply to participate in the proceedings, or the People's Court may notify the third party to participate in the proceedings. A third party ruled by a People's Court to bear civil liability shall have the litigation rights and obligations of a litigant.

Where a third party stipulated in the two preceding paragraphs cannot participate in the proceedings due to a reason not attributable to him/her, but there is evidence to prove that part or all of the contents of the judgment, ruling or mediation document which has taken legal effect is wrong and harm(s) his/her civil rights and interests, he/she may file a lawsuit with the People's Court which has issued the said judgment, ruling or mediation document within six months from the date on which he/she becomes aware or should have become aware that his/her civil rights and interests are harmed. After the People's Court has tried the lawsuit and held that the claim is justified, the People's Court shall amend or revoke the original judgment, ruling or mediation document; where the claim is groundless, the claim shall be rejected.

## 第二节 诉讼代理人

**第六十条** 无诉讼行为能力人由他的监护人作为法定代理人代为诉讼。法定代理人之间互相推诿代

## Section 2 — Agent Ad Litem

**Article 60** For a person with no capacity for litigation action, his/her guardians shall act as his/her legal representatives to participate in the proceedings. Where the legal representatives try to shirk responsibilities, the People's Court shall appoint one of them to participate in the



理责任的，由人民法院指定其中一人代为诉讼。

**proceedings.**

**第六十一条** 当事人、法定代理人可以委托一至二人作为诉讼代理人。

下列人员可以被委托为诉讼代理人：

（一）律师、基层法律服务工作者；

（二）当事人的近亲属或者工作人员；

（三）当事人所在社区、单位以及有关社会团体推荐的公民。

**Article 61** A litigant or a legal representative may entrust one to two persons as his/her agent ad litem. The following persons may be entrusted as agents ad litem:

(1) Lawyers, grassroots legal service workers;

(2) Close relatives or employees of a litigant; and

(3) Citizens recommended by the community, employer of a litigant and the relevant social bodies.

**第六十二条** 委托他人代为诉讼，必须向人民法院提交由委托人签名或者盖章的授权委托书。

授权委托书必须记明委托事项和权限。诉讼代理人代为承认、放弃、变更诉讼请求，进行和解，提起反诉或者上诉，必须有委托人的特别授权。

**Article 62** Where a person is entrusted to participate in the proceedings, a power of attorney signed or sealed by the principal shall be submitted to the People's Court. The power of attorney shall state the entrustment matter and limit of authority. An agent ad litem shall be specifically authorised by the principal for confirmation, waiver or amendment of claim, settlement, filing of counterclaim or appeal.

A power of attorney mailed from overseas by or submitted on behalf of a citizen of the People's Republic of China living abroad shall be authenticated by the embassy or consulate of the People's Republic of China based in that country; where there is no embassy or consulate, the power of attorney shall be authenticated

侨居在外的中华人民共和国公民从国外寄交或者托交的授权委托书，必须经中华人民共和国驻该国的使领馆证明；没有使领馆的，由与中华人民共和国有外交关系的第三国驻该国的使领馆证明，再转由中华人民共和国驻该第三国使领馆证明，或者由当地的爱国华侨团体证明。

by the embassy or consulate of a third country which has diplomatic relations with the People's Republic of China based in that country, and then authenticated by the embassy or consulate of the People's Republic of China based in that third country, or authenticated by a patriotic overseas Chinese organisation of that locality.

**第六十三条** 诉讼代理人的权限如果变更或者解除，当事人应当书面告知人民法院，并由人民法院通知对方当事人。

**Article 63** Where there is change or revocation of the limit of authority of an agent ad litem, the litigant shall notify the People's Court in writing, and the People's Court shall notify the counterparty litigant.

**第六十四条** 代理诉讼的律师和其他诉讼代理人有权调查收集证据，可以查阅本案有关材料。查阅本案有关材料的范围和办法由最高人民法院规定。

**Article 64** Lawyers acting as agents ad litem and other agents ad litem shall have the right to investigate and gather evidence, and may inspect the relevant materials of the case. The scope and methods for inspection of the relevant materials of a case shall be stipulated by the Supreme People's Court.

**第六十五条** 离婚案件有诉讼代理人的，本人除不能表达意思的以外，仍应出庭；确因特殊情况无法出庭的，必须向人民法院提交书面意见。

**Article 65** Where an agent ad litem is appointed for a divorce case, the principal shall be present in court, unless he/she is unable to express him/her meaning; where the principal is unable to be present in court due to special circumstances, he/she shall submit a written opinion to the People's Court.

第六章 证 据

Chapter 6 — Evidence

第六十六条 证据包括：

- （一）当事人的陈述；
- （二）书证；
- （三）物证；
- （四）视听资料；
- （五）电子数据；
- （六）证人证言；
- （七）鉴定意见；
- （八）勘验笔录。

证据必须查证属实，才能作为认定事实的根据。

Article 66 Evidence shall include: (1) Statements of litigants;

- (2) Documentary evidence;
- (3) Physical evidence;
- (4) Audio-visual materials;
- (5) Electronic data;
- (6) Witness testimony;
- (7) Expert opinions; and
- (8) Inquest records.

Evidence must be verified to be true before it can be used as the basis for ascertainment of facts.

第六十七条 当事人对自己提出的主张，有责任提供证据。

当事人及其诉讼代理人因客观原因不能自行收集的证据，或者人民法院认为审理案件需要的证据，人民法院应当调查收集。

Article 67 Litigants have the burden of proof for the claims they make. Where a litigant and his/her/its agent ad litem are

unable to gather evidence on their own due to objective reason, or With respect to the evidence deemed by the People's Court to be necessary for trial of case, the People's Court shall investigate and gather the evidence.

A People's Court shall examine and verify evidence comprehensively and objectively in accordance with statutory procedures.

人民法院应当按照法定程序，  
全面地、客观地审查核实证据。

**第六十八条** 当事人对自己提出的主张应当及时提供证据。

人民法院根据当事人的主张和案件审理情况，确定当事人应当提供的证据及其期限。当事人在该期限内提供证据确有困难的，可以向人民法院申请延长期限，人民法院根据当事人的申请适当延长。当事人逾期提供证据的，人民法院应当责令其说明理由；拒不说明理由或者理由不成立的，人民法院根据不同情形可以不予采纳该证据，或者采纳该证据但予以训诫、罚款。

**Article 68 Litigants shall promptly provide evidence for the claims they make.** A People's Court shall determine the evidence to be provided by a litigant and the deadline thereof pursuant to the litigant's assertion and the status of trial of case. Where it is genuinely difficult for the litigant to provide evidence by the deadline, the litigant may apply to the People's Court for an extension of time, the People's Court shall grant an appropriate extension based on the litigant's application. Where the litigant provides evidence after the deadline, the People's Court shall order the litigant to state the reason; where the litigant refuses to state the reason or the reason is groundless, the People's Court may decide on non-admission of the evidence based on different circumstances, or decide on admission of the evidence but impose a warning or fine.

**第六十九条** 人民法院收到当事人提交的证据材料，应当出具收据，写明证据名称、页数、份数、原件或者复印件以及收到时间等，并由经办人员签名或者盖章。

**Article 69 A People's Court shall issue a receipt for evidential materials submitted by a litigant, stating the description of the evidence, number of pages, number of copies, original copy or photocopy and time of receipt, etc., and the receipt shall be signed or sealed by the handling officer.**

**第七十条** 人民法院有权向有关单位和个人调查取证，有关单位

**Article 70 People's Courts shall have the right to investigate into and gather evidence from the relevant organisations and individuals, the relevant organisations and individuals shall not refuse.** People's Courts shall verify the authenticity of proof

和个人不得拒绝。

人民法院对有关单位和个人提出的证明文书，应当辨别真伪，审查确定其效力。

documents presented by the relevant organisations and individuals and examine and determine the validity.

**第七十一条** 证据应当在法庭上出示，并由当事人互相质证。对涉及国家秘密、商业秘密和个人隐私的证据应当保密，需要在法庭出示的，不得在公开开庭时出示。

**Article 71** Evidence shall be presented in the courtroom and be subject to cross-examination by the litigants. Evidence which involves State secrets, commercial secrets and personal privacy shall be kept confidential, and shall not be presented at open hearings when there is a need to present such evidence in the courtroom.

**第七十二条** 经过法定程序公证证明的法律事实和文书，人民法院应当作为认定事实的根据，但有相反证据足以推翻公证证明的除外。

**Article 72** People's Courts shall use legal facts and documents notarised and authenticated through statutory procedures as the basis for ascertainment of facts, unless there is evidence to the contrary to invalidate the notarisation certificate.

**第七十三条** 书证应当提交原件。物证应当提交原物。提交原件或者原物确有困难的，可以提交复制品、照片、副本、节录本。

**Article 73** Original copies of documentary evidence shall be submitted. Original physical evidence shall be submitted. Where there is genuine difficulty in submission of original copies of documentary evidence or original physical evidence, a replication, photograph, duplicate copy or extract may be submitted. With respect to documentary evidence in a foreign language, a Chinese translation shall be accompanied.

提交外文书证，必须附有中文译本。

**第七十四条** 人民法院对视听资料，应当辨别真伪，并结合本案

**Article 74** People's Courts shall verify the authenticity of audio-visual materials, taking into account other evidence of the case, to examine and determine whether the audio-visual

的其他证据，审查确定能否作为认定事实的根据。

**materials may be used as the basis for ascertainment of facts.**

**第七十五条** 凡是知道案件情况的单位和个人，都有义务出庭作证。有关单位的负责人应当支持证人作证。

**Article 75 Organisations and individuals that are aware of the facts of a case shall be obligated to testify in court. The persons-in-charge of the relevant organisations shall support testifying by the witnesses.** Persons who are unable to express their meaning properly cannot testify.

不能正确表达意思的人，不能作证。

**第七十六条** 经人民法院通知，证人应当出庭作证。有下列情形之一的，经人民法院许可，可以通过书面证言、视听传输技术或者视听资料等方式作证：

**Article 76 Upon notification by a People's Court, a witness shall testify in court. Under any of the following circumstances, upon consent by the People's Court, a witness may testify by way of written testimony, audio-visual transmission technique or audio-visual materials, etc.:** (1) The witness is unable to be present in court due to health reason;

（一）因健康原因不能出庭的；

(2) The witness is unable to be present in court due to long journey and inaccessibility;

（二）因路途遥远，交通不便不能出庭的；

(3) The witness is unable to be present in court due to force majeure such as natural disaster, etc.; or

（三）因自然灾害等不可抗力不能出庭的；

(4) The witness is unable to be present in court due to any other proper reason.

（四）其他有正当理由不能出庭的。

**第七十七条** 证人因履行出庭作证义务而支出的交通、住宿、就餐等必要费用以及误工损失，由败诉一方当事人负担。当事人申请证人作证的，由该当事人先行垫付；当事人没有申请，人民法院通知证人作证的，由人民法院先行垫付。

**Article 77** The requisite transportation, accommodation and meal expenses incurred by a witness for performance of the obligation to testify in court and losses from absent from work shall be borne by the litigant who lost in the lawsuit. Where a litigant applies for a witness to testify, the litigant shall make advance payment; where a litigant does not make an application and the People's Court notifies a witness to testify, the People's Court shall make advance payment.

**第七十八条** 人民法院对当事人的陈述，应当结合本案的其他证据，审查确定能否作为认定事实的根据。

**Article 78** A People's Court shall examine and determine whether a litigant's statement can be used as the basis for ascertainment of facts, taking into account other evidence of the case. Where a litigant refuses to give a statement, this shall have no impact on the People's Court's ascertainment of facts of the case based on evidence.

当事人拒绝陈述的，不影响人民法院根据证据认定案件事实。

**第七十九条** 当事人可以就查明事实的专门性问题向人民法院申请鉴定。当事人申请鉴定的，由双方当事人协商确定具备资格的鉴定人；协商不成的，由人民法院指定。

**Article 79** A litigant may apply to the People's Court for examination in respect of specialised issues pertaining to ascertainment of facts. Where a litigant applies for examination, both parties to the action shall discuss and appoint a qualified expert witness; where the discussion is unsuccessful, the People's Court shall appoint an expert witness. Where a litigant does not apply for examination, but the People's Court deemed that examination of specialised issues is necessary, the People's Court shall entrust a qualified expert witness to carry out examination.

当事人未申请鉴定，人民法院对专门性问题认为需要鉴定的，应当委托具备资格的鉴定人进行鉴定。



**第八十条** 鉴定人有权了解进行鉴定所需要的案件材料，必要时可以询问当事人、证人。

鉴定人应当提出书面鉴定意见，在鉴定书上签名或者盖章。

**第八十一条** 当事人对鉴定意见有异议或者人民法院认为鉴定人有必要出庭的，鉴定人应当出庭作证。经人民法院通知，鉴定人拒不出庭作证的，鉴定意见不得作为认定事实的根据；支付鉴定费用的当事人可以要求返还鉴定费用。

**第八十二条** 当事人可以申请人民法院通知有专门知识的人出庭，就鉴定人作出的鉴定意见或者专业问题提出意见。

**第八十三条** 勘验物证或者现场，勘验人必须出示人民法院的证件，并邀请当地基层组织或者当事人所在单位派人参加。当事人或者当事人的成年家属应当到场，拒不到场的，不影响勘验的进行。

**Article 80** An expert witness shall have the right to understand the case materials necessary for examination and may interview the litigants and witnesses where necessary. An expert witness shall make a written examination opinion and sign or affix seal on the examination opinion.

**Article 81** Where a litigant disagrees with the examination opinion or the People's Court deemed that it is necessary for the expert witness to be present in court, the expert witness shall testify in court. Upon notification by the People's Court, where the expert witness refuses to testify in court, the examination opinion shall not be used as the basis for ascertainment of facts; a litigant who has paid for examination expenses may require a refund of the examination expenses.

**Article 82** A litigant may apply to the People's Court to notify a person with special expertise to be present in court to give opinions on the examination opinion or a specialised issue of the expert witness.

**Article 83** An inspector who inspects physical evidence, or the premises shall present his/her People's Court credential and invite the local grassroots organisation or the employer of a litigant to assign personnel to participate in the inspection. The litigant or an adult family member of the litigant shall be present; where the litigant or an adult family member of the litigant refuses to be present, the conduct of the inspection shall not be affected. The relevant organisations and individuals shall be obligated to protect the premises and assist in the inspection pursuant to the notice of the People's Court.



有关单位和个人根据人民法院的通知，有义务保护现场，协助勘验工作。

勘验人应当将勘验情况和结果制作笔录，由勘验人、当事人和被邀参加人签名或者盖章。

The inspector shall keep written record of the status and outcome of the inspection, and the inspector, the litigant and the invited participants shall sign or affix seal thereon.

**第八十四条** 在证据可能灭失或者以后难以取得的情况下，当事人可以在诉讼过程中向人民法院申请保全证据，人民法院也可以主动采取保全措施。

因情况紧急，在证据可能灭失或者以后难以取得的情况下，利害关系人可以在提起诉讼或者申请仲裁前向证据所在地、被申请人住所地或者对案件有管辖权的人民法院申请保全证据。

证据保全的其他程序，参照适用本法第九章保全的有关规定。

**Article 84** Where the evidence may be lost, or it may be difficult to obtain the evidence in future, a litigant may apply to the People's Court for preservation of evidence during the proceedings, the People's Court may also voluntarily adopt preservation measures. Under urgent circumstances where the evidence may be lost or it may be difficult to obtain the evidence in future, an interested party may apply to the People's Court at the location of the evidence or the respondent's domicile or the People's Court which has jurisdiction for the case for preservation of evidence prior to filing of lawsuit or application for arbitration.

The relevant provisions of Chapter 9 hereof on preservation shall apply to other procedures for preservation of evidence mutatis mutandis.

第七章 期间、送达

Chapter 7 — Period and Service of Process

第一节 期 间

Section 1 — Period

**第八十五条** 期间包括法定期

间和人民法院指定的期间。

期间以时、日、月、年计算。

期间开始的时和日，不计算在期间内。

期间届满的最后一日是法定休假日的，以法定休假日后的第一日为期间届满的日期。

期间不包括在途时间，诉讼文书在期满前交邮的，不算过期。

**第八十六条** 当事人因不可抗

拒的事由或者其他正当理由耽误期限的，在障碍消除后的十日内，可以申请顺延期限，是否准许，由人民法院决定。

**第二节 送 达****第八十七条** 送达诉讼文书必

须有送达回证，由受送达人在送达回证上记明收到日期，签名或者盖章。

受送达人在送达回证上的签收

**Article 85 Period shall include the statutory period and the period stipulated by the People's Court.**

Period shall be computed in hours, days, months and years. The time and date of commencement of a period shall be excluded from the period.

Where the last date of expiry of the period is a legal holiday, the first day following the legal holiday shall be the date of expiry of the period.

Transit time shall be excluded in a period, a litigation document mailed before the date of expiry shall not be deemed as overdue.

**Article 86** Where a litigant is unable to meet a deadline due to a force majeure event or any other proper reason, the litigant may apply for an extension of time within 10 days from elimination of the hindrance, the People's Court shall decide whether to grant an extension of time.

**Section 2 — Service of Process**

**Article 87** An acknowledgement of service is required for service of litigation documents, the party being served shall state the date of receipt and sign or affix seal on the acknowledgement of service. The date of service of process shall be the date of receipt acknowledgement stated on the acknowledgement of service by the party being served.

日期为送达日期。

**第八十八条** 送达诉讼文书，应当直接送交受送达人。受送达人是公民的，本人不在交他的同住成年家属签收；受送达人是法人或者其他组织的，应当由法人的法定代表人、其他组织的主要负责人或者该法人、组织负责收件的人签收；受送达人有诉讼代理人的，可以送交其代理人签收；受送达人已向人民法院指定代收人的，送交代收人签收。

受送达人的同住成年家属，法人或者其他组织的负责收件的人，诉讼代理人或者代收人在送达回证上签收的日期为送达日期。

**第八十九条** 受送达人或者他的同住成年家属拒绝接收诉讼文书的，送达人可以邀请有关基层组织或者所在单位的代表到场，说明情况，在送达回证上记明拒收事由和日期，由送达人、见证人签名或者盖章，把诉讼文书留在受送达人的

**Article 88** Litigation documents shall be served directly on the party being served. Where the party being served is a citizen, an adult family member living with him/her may acknowledge receipt of the documents served in his/her absence; where the party being served is a legal person or an organisation, the legal representative of the legal person or the key person-in-charge of the organisation or the person of the said legal person or the organisation responsible for receiving documents shall acknowledge receipt of the documents served; where the party being served has appointed an agent ad litem, the agent ad litem may acknowledge receipt of the documents served; where the party being served has notified the People's Court of assigning an agent to receive litigation documents, the agent shall acknowledge receipt of the documents served. The date of service shall be the date on which the adult family member residing with the person to be served, the person responsible for the receipt of the document of the legal person or other organization, the representative of the litigation or the person acting on behalf of the person signing for acknowledge receipt of the documents served.

**Article 89** Where the party being served or the adult family member(s) living with him/her refuse(s) to receive the litigation documents, the person serving the documents may invite the relevant grassroots organisation or a representative of his/her employer to be present, explain the situation, state the facts and date for refusal of receipt on the acknowledgement of service, the person serving the documents and the witness shall sign or affix seal thereon and leave the litigation documents at the address of the party being served; or leave the litigation documents at the address of the party being served and record the service process by

住所；也可以把诉讼文书留在受送达人的住所，并采用拍照、录像等方式记录送达过程，即视为送达。

**way of photography, video-recording, etc., and the litigation documents shall be deemed served.**

**第九十条** 经受送达人同意，人民法院可以采用能够确认其收悉的电子方式送达诉讼文书。通过电子方式送达的判决书、裁定书、调解书，受送达人提出需要纸质文书的，人民法院应当提供。

**Article 90** Upon consent of the party on whom litigation documents are to be served, the people's Court may adopt an electronic method of service of litigation documents the receipt of which can be acknowledged. For a judgment, ruling or mediation document served electronically, if the party requests for a hard copy thereof, the people's Court shall provide. Where the party is served by any means of service stipulated in the preceding paragraph, the date when the served information reach the specific system of the party being served shall be the service date.

采用前款方式送达的，以送达信息到达受送达人特定系统的日期为送达日期。

**第九十一条** 直接送达诉讼文书有困难的，可以委托其他人民法院代为送达，或者邮寄送达。邮寄送达的，以回执上注明的收件日期为送达日期。

**Article 91** Where there is difficulty in direct service of litigation documents, another People's Court may be entrusted to serve the documents on behalf, or the documents may be mailed. Where the service of process is made by way of mail, the date of service of process shall be the date of receipt stated on the acknowledgement of service.

**第九十二条** 受送达人是军人的，通过其所在部队团以上单位的政治机关转交。

**Article 92** Where the party being served is a serviceman, the documents shall be served through the political organ at or above the regimental level of the unit to which he/she belongs.

**第九十三条** 受送达人被监禁的，通过其所在监所转交。

**Article 93** Where the party being served is under imprisonment, the documents shall be served through the prison in which he/she is being confined. Where the party being served is subject to mandatory education measures, the

受送达人被采取强制性教育措施的，通过其所在强制性教育机构转交。

documents shall be served through the mandatory educational institution in which he/she is confined.

**第九十四条** 代为转交的机关、单位收到诉讼文书后，必须立即交受送达人签收，以在送达回证上的签收日期，为送达日期。

**Article 94** Upon receipt of the litigation documents, the agency or unit which received the litigation documents on behalf shall forthwith pass the litigation documents to the party being served for acknowledgement of receipt, the date of service of process shall be the date of receipt acknowledgement stated on the acknowledgement of service.

**第九十五条** 受送达人下落不明，或者用本节规定的其他方式无法送达的，公告送达。自发出公告之日起，经过三十日，即视为送达。

**Article 95** If the whereabouts of the person on whom the documents are to be served is unknown, or if the documents cannot be served by any other means prescribed in this section, the documents shall be served by public announcement, and shall be deemed to have been served **thirty days after the announcement is made**. Where the documents are served by way of a public announcement, the reason and process shall be stated in the case files.

公告送达，应当在案卷中记明原因和经过。

## 第八章 调 解

## Chapter 8 — Mediation

**第九十六条** 人民法院审理民事案件，根据当事人自愿的原则，在事实清楚的基础上，分清是非，进行调解。

**Article 96** People's Courts shall carry out mediation in the trial of civil cases pursuant to the principle of voluntary participation by litigants, based on clear facts and distinction between right and wrong.

**第九十七条** 人民法院进行调解，可以由审判员一人主持，也可以由合议庭主持，并尽可能就地进

**Article 97** When a People's Court carries out mediation, the mediation may be presided by the judge or the collegiate bench and shall be carried out on the spot as far as possible. A People's Court carrying out mediation may adopt

行。

simple and convenient methods to notify litigants and witnesses to be present in court.

人民法院进行调解，可以用简便方式通知当事人、证人到庭。

**第九十八条** 人民法院进行调解，可以邀请有关单位和个人协助。被邀请的单位和个人，应当协助人民法院进行调解。

**Article 98** A People's Court carrying out mediation may invite the relevant organisations and individuals to assist. The invited organisations and individuals shall assist the People's Court to carry out mediation.

**第九十九条** 调解达成协议，必须双方自愿，不得强迫。调解协议的内容不得违反法律规定。

**Article 99** An agreement reached through mediation shall be voluntary between both parties and shall not be coerced. The contents of a mediation agreement shall not violate the provisions of the law.

**第一百条** 调解达成协议，人民法院应当制作调解书。调解书应当写明诉讼请求、案件的事实和调解结果。

**Article 100** When an agreement is reached through mediation, the People's Court shall prepare a mediation document. The mediation document shall state the claim(s), the facts of the case and the mediation outcome. A mediation document shall be signed by the judge(s) and the court clerk, be affixed with the People's Court's seal, and served on both parties to the lawsuit.

调解书由审判人员、书记员署名，加盖人民法院印章，送达双方当事人。

A mediation document shall come into legal effect upon acknowledgement of receipt by both parties to the lawsuit.

调解书经双方当事人签收后，即具有法律效力。

**第一百零一条** 下列案件调解达成协议，人民法院可以不制作调

**Article 101** In the event of an agreement reached through mediation for the following cases, the People's Court may not be required to prepare a mediation document: (1) Divorce

解书:

cases in which the parties reconcile through mediation;

(一) 调解和好的离婚案件;

(2) Cases in which an adoptive relationship is maintained through mediation;

(二) 调解维持收养关系的案件;

(3) Cases which can be forthwith performed; or

件;

(4) Any other cases for which preparation of a mediation document is not required.

(三) 能够即时履行的案件;

With respect to an agreement for which a mediation document is not required to be prepared, written records shall be kept, upon signature or affixation of seal by both parties to the lawsuit, the judge(s) and the court clerk, the agreement shall come into legal effect.

(四) 其他不需要制作调解书的案件。

对不需要制作调解书的协议，  
应当记入笔录，由双方当事人、审判人员、书记员签名或者盖章后，  
即具有法律效力。

**第一百零二条** 调解未达成协议或者调解书送达前一方反悔的，  
人民法院应当及时判决。

**Article 102** Where an agreement is not reached after mediation or either party reneges prior to service of the mediation document, the People's Court shall promptly make a judgment.

**第九章 保全和先予执行**

**Chapter 9 — Preservation and Prior Enforcement**

**第一百零三条** 人民法院对于可能因当事人一方的行为或者其他原因，使判决难以执行或者造成当事人其他损害的案件，根据对方当事人的申请，可以裁定对其财产进行保全、责令其作出一定行为或者

**Article 103** For cases in which the action of a party to the lawsuit or any other reason causes difficulty in enforcement of a judgment or causes other harm to the litigants, a People's Court may, pursuant to an application by a counterparty litigant, rule on preservation of its property or order the counterparty to undertake certain acts or prohibit the counterparty to undertake certain acts; where the litigants do not make an application, a People's Court may rule that preservation measures be adopted where necessary. A



禁止其作出一定行为；当事人没有提出申请的，人民法院在必要时也可以裁定采取保全措施。

人民法院采取保全措施，可以责令申请人提供担保，申请人不提供担保的，裁定驳回申请。

人民法院接受申请后，对情况紧急的，必须在四十八小时内作出裁定；裁定采取保全措施的，应当立即开始执行。

People's Court adopting preservation measures may order the applicant to provide guarantee, where the applicant does not provide guarantee, the People's Court shall rule that the application be rejected.

Upon acceptance of an application, the People's Court shall make a ruling within 48 hours under urgent circumstances; where the People's Court rules that preservation measures shall be adopted, the ruling shall be forthwith enforced.

**第一百零四条** 利害关系人因情况紧急，不立即申请保全将会使其合法权益受到难以弥补的损害的，可以在提起诉讼或者申请仲裁前向被保全财产所在地、被申请人住所地或者对案件有管辖权的人民法院申请采取保全措施。申请人应当提供担保，不提供担保的，裁定驳回申请。

人民法院接受申请后，必须在四十八小时内作出裁定；裁定采取保全措施的，应当立即开始执行。

**Article 104** In the event of urgent circumstances where the legitimate rights and interests of an interested party will be subject to irreparable damages if the interested party does not forthwith apply for preservation, the interested party may, prior to filing of lawsuit or application for arbitration, apply to the People's Court at the location of the properties to be preserved or the respondent's domicile or a People's Court which has jurisdiction for the case for adoption of preservation measures. The applicant shall provide guarantee, where the applicant does not provide guarantee, the People's Court shall rule that the application be rejected. Upon acceptance by an application, the People's Court shall make a ruling within 48 hours; where the People's Court rules that preservation measures shall be adopted, the ruling shall be forthwith enforced.

Where the applicant fails to file a lawsuit or apply for arbitration pursuant to the law within 30 days from adoption of preservation measures by the People's Court, the People's Court shall lift the preservation.



申请人在人民法院采取保全措施后三十日内不依法提起诉讼或者申请仲裁的，人民法院应当解除保全。

**第一百零五条** 保全限于请求的范围，或者与本案有关的财物。

**Article 105** Preservation shall be limited to the scope of the request or the properties related to the case.

**第一百零六条** 财产保全采取查封、扣押、冻结或者法律规定的其他方式。人民法院保全财产后，应当立即通知被保全财产的人。

**Article 106** Preservation of properties shall adopt seizure, confiscation, freezing or any other method stipulated by the law. Upon preservation of properties, the People's Court shall forthwith notify the party whose properties are being preserved. Where the properties have been seized or frozen, the properties shall not be subject to seizure or freezing again.

财产已被查封、冻结的，不得重复查封、冻结。

**第一百零七条** 财产纠纷案件，被申请人提供担保的，人民法院应当裁定解除保全。

**Article 107** Where the respondent of a property dispute case provides guarantee, the People's Court shall rule that preservation be lifted.

**第一百零八条** 申请有错误的，申请人应当赔偿被申请人因保全所遭受的损失。

**Article 108** Where there is an error in an application, the applicant shall compensate the respondent for losses incurred from the preservation.

**第一百零九条** 人民法院对下列案件，根据当事人的申请，可以裁定先予执行：

**Article 109** A People's Court may rule on prior enforcement pursuant to an application of a litigant for the following cases: (1) Recourse of alimony, payment of maintenance, payment of upbringing, pension, medical fees, etc.;

（一）追索赡养费、扶养费、  
抚养费、抚恤金、医疗费用的；

（二）追索劳动报酬的；

（三）因情况紧急需要先予执  
行的。

(2) Recourse of labour remuneration; or

(3) There is a need for prior enforcement under urgent circumstances.

**第一百一十条** 人民法院裁定  
先予执行的，应当符合下列条件：

（一）当事人之间权利义务关  
系明确，不先予执行将严重影响申  
请人的生活或者生产经营的；

（二）被申请人有履行能力。

人民法院可以责令申请人提供  
担保，申请人不提供担保的，驳回  
申请。申请人败诉的，应当赔偿被  
申请人因先予执行遭受的财产损  
失。

**Article 110** The following criteria shall be satisfied for ruling of prior enforcement by a People's Court: (1) The rights and obligations relationship between the litigants is clear, failure to grant prior enforcement shall have a serious impact on the applicant's livelihood or manufacturing and business activities; and

(2) The respondent has the capacity for performance.

(2) The respondent has the capacity for performance.

(2) The respondent has the capacity for performance.

The People's Court may order the applicant to provide guarantee, where the applicant does not provide guarantee, the application shall be rejected. Where the applicant loses the lawsuit, the applicant shall compensate the respondent for property losses incurred from prior enforcement.

**第一百一十一条** 当事人对保  
全或者先予执行的裁定不服的，可  
以申请复议一次。复议期间不停止  
裁定的执行。

**Article 111** A litigant who disagrees with the ruling on preservation or prior enforcement may apply for review once. Enforcement of the ruling shall not be suspended during the review period.

## 第十章 对妨害民事诉讼的强

## Chapter 10 — Mandatory Measures Against Obstruction of

## 制措施

## Civil Action

**第一百一十二条** 人民法院对必须到庭的被告，经两次传票传唤，无正当理由拒不到庭的，可以拘传。

**Article 112** A People's Court may issue a warrant for a Defendant who is required to be present in court but refused to be present in court without a proper reason after being served a summons twice.

**第一百一十三条** 诉讼参与人和其他人应当遵守法庭规则。

**Article 113** Participants in proceedings and other persons shall comply with court rules. A People's Court may reprimand persons who violate court rules, order them to leave the courtroom or impose a fine or detention.

人民法院对违反法庭规则的人，可以予以训诫，责令退出法庭或者予以罚款、拘留。

For persons who cause a stir in the courtroom or charge into the courtroom, insult, defame, threaten or assault the judge(s), or seriously disrupt the order of the courtroom, criminal liability shall be pursued by the People's Court in accordance with the law; in less serious cases, a fine or detention shall be imposed.

人民法院对哄闹、冲击法庭，侮辱、诽谤、威胁、殴打审判人员，严重扰乱法庭秩序的人，依法追究刑事责任；情节较轻的，予以罚款、拘留。

**第一百一十四条** 诉讼参与人或者其他人有下列行为之一的，人民法院可以根据情节轻重予以罚款、拘留；构成犯罪的，依法追究刑事责任：

**Article 114** For participants in proceedings or other persons who commit any of the following acts, the People's Court may impose a fine or detention based on the extent of the circumstances; where the case constitutes a criminal offence, criminal liability shall be pursued in accordance with the law: (1) Forge and destroy important evidence, obstructing trial of cases by the People's Court;

(2) Use violence, threat or bribery to stop a witness from testifying or instigate, bribe or threaten others to commit perjury;

（一）伪造、毁灭重要证据，

妨碍人民法院审理案件的；

（二）以暴力、威胁、购买方法阻止证人作证或者指使、购买、胁迫他人作伪证的；

（三）隐藏、转移、变卖、毁损已被查封、扣押的财产，或者已被清点并责令其保管的财产，转移已被冻结的财产的；

（四）对司法工作人员、诉讼参加人、证人、翻译人员、鉴定人、勘验人、协助执行的人，进行侮辱、诽谤、诬陷、殴打或者打击报复的；

（五）以暴力、威胁或者其他方法阻碍司法工作人员执行职务的；

（六）拒不履行人民法院已经发生法律效力的判决、裁定的。

人民法院对有前款规定的行为之一的单位，可以对其主要负责人或者直接责任人员予以罚款、拘

(3) Conceal, transfer, sell and destroy seized or confiscated properties or properties which have been counted and placed under custody, transfer frozen properties;

(4) Insult, defame, frame, assault or retaliate against judicial staff, participants in proceedings, witnesses, interpreters, expert witnesses, inspectors and personnel assisting in enforcement;

(5) Obstruct performance of duties by judicial staff by way of violence, threat or any other method; or

(6) Refuse to perform a judgment or ruling of a People's Court which has come into legal effect.

The People's Court may impose a fine or detention on the key person-in-charge or directly accountable personnel of the organisation which has committed any of the acts stipulated in the preceding paragraph; where the case constitutes a criminal offence, criminal liability shall be pursued in accordance with the law.

留；构成犯罪的，依法追究刑事责任。

**第一百一十五条** 当事人之间恶意串通，企图通过诉讼、调解等方式侵害国家利益、社会公共利益或者他人合法权益的，人民法院应当驳回其请求，并根据情节轻重予以罚款、拘留；构成犯罪的，依法追究刑事责任。

当事人单方捏造民事案件基本事实，向人民法院提起诉讼，企图侵害国家利益、社会公共利益或者他人合法权益的，适用前款规定。

**第一百一十六条** 被执行人与他人恶意串通，通过诉讼、仲裁、调解等方式逃避履行法律文书确定的义务的，人民法院应当根据情节轻重予以罚款、拘留；构成犯罪的，依法追究刑事责任。

**第一百一十七条** 有义务协助调查、执行的单位有下列行为之一的，人民法院除责令其履行协助义务外，对下列情形之一，处以罚款：

**Article 115** Where the litigants have conspired to attempt to infringe upon the state interest, public interest or the legitimate rights and interests of others through litigation, mediation, etc., the People's Court shall reject their request and impose a fine or detention based on the extent of the circumstances; where the case constitutes a criminal offence, criminal liability shall be pursued in accordance with the law. Where a litigant unilaterally fabricates the basic facts of a civil case to file a lawsuit with a people's court in an attempt to infringe upon the state interest, public interest or the legitimate rights and interests of others, the provisions of the preceding paragraph shall apply.

**Article 116** Where an enforcee has conspired with others to evade performance of the obligations stipulated in the legal documents through litigation, arbitration, mediation, etc, the People's Court shall impose a fine or detention pursuant to the extent of the circumstances; where the case constitutes a criminal offence, criminal liability shall be pursued in accordance with the law.

**Article 117** Where an organisation obligated to assist in investigation or enforcement has committed any of the following acts, the People's Court may, in addition to ordering the organisation to perform the obligation to assist, impose a fine: (1) The relevant organisation refuses or obstructs the

务外，并可以予以罚款：

People's Court's investigation or evidence collection;

（一）有关单位拒绝或者妨碍  
人民法院调查取证的；

(2) The relevant organisation refuses to assist in enquiry, seizure, freezing, allocation or realisation of properties upon receipt of the People's Court's Notice on Assistance in Enforcement;

（二）有关单位接到人民法院  
协助执行通知书后，拒不协助查  
询、扣押、冻结、划拨、变价财产  
的；

(3) The relevant organisation refuses to assist in seizure of the enforcee's income, handling of transfer of the relevant property rights certificate, forwarding of the relevant bills, certificates or other properties upon receipt of the People's Court's Notice on Assistance in Enforcement; or

(4) Refusal to assist in enforcement.

（三）有关单位接到人民法院  
协助执行通知书后，拒不协助扣留  
被执行人的收入、办理有关财产权  
证照转移手续、转交有关票证、证  
照或者其他财产的；

The People's Court may impose a fine on the key person-in-charge or directly accountable personnel of the organisation which has committed any of the acts stipulated in the preceding paragraph; person(s) who still refuse(s) to perform the obligations to assist may be detained; the People's Court may propose judicial recommendations of disciplinary actions to the surveillance authorities or the relevant authorities.

（四）其他拒绝协助执行的。

人民法院对有前款规定的行为  
之一的单位，可以对其主要负责人  
或者直接责任人员予以罚款；对仍  
不履行协助义务的，可以予以拘  
留；并可以向监察机关或者有关机  
关提出予以纪律处分的司法建议。

**第一百一十八条** 对个人的罚  
款金额，为人民币十万元以下。对  
单位的罚款金额，为人民币五万元

**Article 118 A fine imposed on an individual shall not exceed RMB100,000. A fine imposed on an organisation shall range from RMB50,000 to RMB1 million. The detention period shall not**

以上一百万元以下。

拘留的期限，为十五日以下。

被拘留的人，由人民法院交公安机关看管。在拘留期间，被拘留人承认并改正错误的，人民法院可以决定提前解除拘留。

exceed 15 days.

Detained persons shall be referred to the custody of public security authorities by the People's Court. Where a detained person admits and makes correction during the detention period, the People's Court may decide to terminate the detention prematurely.

**第一百一十九条** 拘传、罚款、拘留必须经院长批准。

拘传应当发拘传票。

罚款、拘留应当用决定书。对决定不服的，可以向上一级人民法院申请复议一次。复议期间不停止执行。

**Article 119 Issuance of warrant, fine or detention shall be subject to approval by the President of the People's Court.** Subpoena shall be issued for coercive summons.

A written decision shall be made for a fine or detention. A person who disagrees with a decision may apply to the higher-level People's Court for review once. Enforcement of the written decision shall not be suspended during the review period.

**第一百二十条** 采取对妨害民事诉讼的强制措施必须由人民法院决定。任何单位和个人采取非法拘禁他人或者非法私自扣押他人财产追索债务的，应当依法追究刑事责任，或者予以拘留、罚款。

**Article 120 Mandatory measures for obstruction of civil lawsuit shall be decided by the People's Court. For any organisations and individuals adopting illegal detention of others or illegal seizure of other's properties for recovery of debts, criminal liability shall be pursued in accordance with the law or the People's Court may impose detention or a fine.**

## 第十一章 诉讼费用

## Chapter 11 — Litigation Expenses

**第一百二十一条** 当事人进行

**Article 121 Litigants participating in civil lawsuits shall pay a**

民事诉讼，应当按照规定交纳案件受理费。财产案件除交纳案件受理费外，并按照规定交纳其他诉讼费用。

当事人交纳诉讼费用确有困难的，可以按照规定向人民法院申请缓交、减交或者免交。

收取诉讼费用的办法另行制定。

**case acceptance fee pursuant to the provisions. For property cases, in addition to case acceptance fee, litigants shall pay other litigation expenses pursuant to the provisions.** Where a litigant has genuine difficulty in payment of litigation expenses, the litigant may apply to the People's Court for deferred payment, reduction or exemption of payment pursuant to the provisions.

The measures on collection of litigation expenses shall be separately formulated.

第二编 审判程序

Part II TRIAL PROCEDURES

第十二章 第一审普通程序

Chapter 12 — General Procedures for Trial of First Instance

第一节 起诉和受理

Section 1 — Filing and Acceptance of Lawsuits

**第一百二十二条** 起诉必须符合下列条件：

（一）原告是与本案有直接利害关系的公民、法人和其他组织；

（二）有明确的被告；

（三）有具体的诉讼请求和事实、理由；

（四）属于人民法院受理民事

**Article 122**Filing of a lawsuit shall satisfy the following **criteria:** (1) The Plaintiff is a citizen, a legal person or an organisation that has a direct stake in the case;

(2) There is/are specific Defendant(s);

(3) There are specific claim(s) and facts and reasons; and

(4) The lawsuit falls under the scope of acceptance of civil lawsuits by People's Courts and the jurisdiction of the People's Court which accepts the lawsuit.



诉讼的范围和受诉人民法院管辖。

**第一百二十三条** 起诉应当向  
人民法院递交起诉状，并按照被告  
人数提出副本。

书写起诉状确有困难的，可以  
口头起诉，由人民法院记入笔录，  
并告知对方当事人。

**第一百二十四条** 起诉状应当  
记明下列事项：

（一）原告的姓名、性别、年  
龄、民族、职业、工作单位、住  
所、联系方式，法人或者其他组织  
的名称、住所和法定代表人或者主  
要负责人的姓名、职务、联系方  
式；

（二）被告的姓名、性别、工  
作单位、住所等信息，法人或者其  
他组织的名称、住所等信息；

（三）诉讼请求和所根据的事  
实与理由；

（四）证据和证据来源，证人

**Article 123** An indictment shall be submitted to a People's Court for filing of a lawsuit, and the number of duplicate copies to be submitted shall be based on the number of the Defendants. Where there is genuine difficulty for submission of a written indictment, the lawsuit may be filed verbally, and the People's Court shall keep the written record and notify the counterparty of the lawsuit.

**Article 124** An indictment shall state the following matters: (1) The name, gender, age, race, occupation, employer, address, contact details of the Plaintiff, the name, address of the legal person or organisation and the name, designation and contact details of the legal representative or the key person-in-charge; (2) The name, gender, employer, address, etc. of the Defendant, the name, address, etc. of the legal person or other organisation; (3) Claim and facts and reasons on which the claim is based; and (4) Evidence and source of evidence, the name and address of the witness.

姓名和住所。

**第一百二十五条** 当事人起诉到人民法院的民事纠纷，适宜调解的，先行调解，但当事人拒绝调解的除外。

**第一百二十六条** 人民法院应当保障当事人依照法律规定享有的起诉权利。对符合本法第一百二十二条的起诉，必须受理。符合起诉条件的，应当在七日内立案，并通知当事人；不符合起诉条件的，应当在七日内作出裁定书，不予受理；原告对裁定不服的，可以提起上诉。

**第一百二十七条** 人民法院对下列起诉，分别情形，予以处理：

（一）依照行政诉讼法的规定，属于行政诉讼受案范围的，告知原告提起行政诉讼；

（二）依照法律规定，双方当事人达成书面仲裁协议申请仲裁、不得向人民法院起诉的，告知原告

**Article 125** Where a civil dispute lawsuit lodged by a litigant with a People's Court is suitable for mediation, mediation shall be carried out first, except where the litigant refuses mediation.

**Article 126** People's Courts shall protect the rights of litigants for filing of lawsuit pursuant to the provisions of the laws. Lawsuits which comply with Article 122 hereof shall be accepted. A People's Court shall establish a case file for a lawsuit which satisfies the prosecution criteria within seven days and notify the litigants; where the prosecution criteria is not satisfied, the People's Court may issue a ruling document on non-acceptance of lawsuit within seven days; where the Plaintiff disagrees with the ruling, the Plaintiff may file an appeal.

**Article 127** People's Courts may deal with the following filing of lawsuits based on the respective circumstances: (1) Where the case falls under the scope of acceptance of an administrative lawsuit pursuant to the provisions of the Administrative Procedure Law, the People's Court shall notify the Plaintiff to file an administrative lawsuit;

(2) Where both parties to a lawsuit have entered into a written arbitration agreement to apply for arbitration pursuant to the provisions of the laws, and are not allowed to file a lawsuit with a People's Court, the People's Court shall notify the Plaintiff to apply to an arbitration organisation for arbitration;

(3) Where a dispute should be handled by other authorities pursuant to the provisions of the laws, the People's Court shall

向仲裁机构申请仲裁；

notify the Plaintiff to apply to the relevant authorities for resolution;

（三）依照法律规定，应当由  
其他机关处理的争议，告知原告向  
有关机关申请解决；

(4) Where the case does not fall under the jurisdiction of the  
People's Court, the People's Court shall notify the Plaintiff to file a  
lawsuit with a People's Court which has jurisdiction;

（四）对不属于本院管辖的案  
件，告知原告向有管辖权的人民法  
院起诉；

(5) In the event of a case for which the judgment, ruling or  
mediation document has come into legal effect, and that the litigant  
files a lawsuit again, the People's Court shall notify the Plaintiff to  
apply for re-trial, except for a ruling where the People's Court  
grants withdrawal of lawsuit;

（五）对判决、裁定、调解书  
已经发生法律效力的案件，当事人  
又起诉的，告知原告申请再审，但  
人民法院准许撤诉的裁定除外；

(6) Where a lawsuit cannot be filed within a stipulated period  
pursuant to the provisions of the laws, but the Plaintiff files a  
lawsuit within the period for which filing of lawsuit is prohibited, the  
lawsuit shall not be accepted; and

（六）依照法律规定，在一定  
期限内不得起诉的案件，在不得起  
诉的期限内起诉的，不予受理；

(7) With respect to divorce cases for which the judgment does not  
permit a divorce, divorce cases for which both parties are  
reconciled after mediation, and cases for which adoptive relations  
are maintained by the judgment or upon mediation, where there  
are no new circumstances or a new reason and the Plaintiff files a  
lawsuit again within six months, the lawsuit shall not be accepted.

（七）判决不准离婚和调解和  
好的离婚案件，判决、调解维持收  
养关系的案件，没有新情况、新理  
由，原告在六个月内又起诉的，不  
予受理。

## 第二节 审理前的准备

## Section 2 — Pre-trial Preparation

### 第一百二十八条 人民法院应

**Article 128 A People's Court shall send a duplicate copy of the  
indictment to the Defendant within five days from the date of**

当在立案之日起五日内将起诉状副本发送被告，被告应当在收到之日起十五日内提出答辩状。答辩状应当记明被告的姓名、性别、年龄、民族、职业、工作单位、住所、联系方式；法人或者其他组织的名称、住所和法定代表人或者主要负责人的姓名、职务、联系方式。人民法院应当在收到答辩状之日起五日内将答辩状副本发送原告。

被告不提出答辩状的，不影响人民法院审理。

**第一百二十九条** 人民法院对决定受理的案件，应当在受理案件通知书和应诉通知书中向当事人告知有关的诉讼权利义务，或者口头告知。

**第一百三十条** 人民法院受理案件后，当事人对管辖权有异议的，应当在提交答辩状期间提出。人民法院对当事人提出的异议，应当审查。异议成立的，裁定将案件移送有管辖权的人民法院；异议不

**establishment of case file, the Defendant shall submit the pleadings within 15 days from the date of receipt of the indictment. The pleadings shall state the name, gender, age, race, occupation, employer, address and contact details of the Defendant; the name and address of the legal person or other organisation and the name, designation and contact details of the legal representative or the key person-in-charge. The People's Court shall send a duplicate copy of the pleadings to the Plaintiff within five days from the date of receipt of the pleadings. Failure of a Defendant to submit a pleading does not affect trial of the lawsuit by the People's Court.**

**Article 129** Where a People's Court has decided to accept a case, the People's Court shall notify the litigants of the relevant litigation rights and obligations in the notice on acceptance of case and notice on response to action or verbally.

**Article 130** Upon acceptance of a case by the People's Court, where a litigant objects to the jurisdiction, the objection shall be raised during the timeframe for submission of pleadings. The People's Court shall examine the objection raised by the litigant. Where the objection is justified, the People's Court shall rule that the case be forwarded to a People's Court which has jurisdiction; where the objection is groundless, the People's Court shall rule that the objection be rejected. Where the litigants do not raise any objection to jurisdiction and respond

成立的，裁定驳回。

当事人未提出管辖异议，并应诉答辩或者提出反诉的，视为受诉人民法院有管辖权，但违反级别管辖和专属管辖规定的除外。

to defend or file a counterclaim, it shall be deemed that the people's court which accepts the lawsuit has jurisdiction, except where the provisions on jurisdiction by forum level or exclusive jurisdiction are violated.

**第一百三十一条** 审判人员确定后，应当在三日内告知当事人。

**Article 131** Upon confirmation of the judges, the litigants shall be notified within three days.

**第一百三十二条** 审判人员必须认真审核诉讼材料，调查收集必要的证据。

**Article 132** The judge(s) shall examine litigation materials seriously, investigate and gather the requisite evidence.

**第一百三十三条** 人民法院派出人员进行调查时，应当向被调查人出示证件。

调查笔录经被调查人校阅后，由被调查人、调查人签名或者盖章。

**Article 133** Personnel designated by a People's Court to conduct investigation shall present their credentials to the party being investigated. Upon review of the investigation records by the party being investigated, the party being investigated and the investigation personnel shall sign or affix seal thereon.

**第一百三十四条** 人民法院在必要时可以委托外地人民法院调查。

**Article 134** Where necessary, a People's Court may entrust a People's Court at another location to conduct investigation. Specific items and requirements shall be put forward for entrustment of investigation. The entrusted People's Court may voluntarily engage in supplementary investigation.

委托调查，必须提出明确的项目和要求。受委托人民法院可以主

Upon receipt of the power of attorney, the entrusted People's Court shall complete investigation within 30 days. Where the investigation cannot be completed due to some reason, the

动补充调查。

entrusting People's Court shall be notified in writing within the aforesaid period.

受委托人民法院收到委托书后，应当在三十日内完成调查。因故不能完成的，应当在上述期限内函告委托人民法院。

**第一百三十五条** 必须共同进行诉讼的当事人没有参加诉讼的，人民法院应当通知其参加诉讼。

**Article 135** Where a litigant in a joint action does not participate in the proceedings, the People's Court shall notify the litigant to participate in the proceedings.

**第一百三十六条** 人民法院对受理的案件，分别情形，予以处理：

**Article 136** People's Courts shall deal with accepted cases based on the respective circumstances: (1) The litigants do not dispute, and the case complies with the criteria stipulated in the procedures of supervision and urge, the case may be moved to the procedures of supervision and urge;

（一）当事人没有争议，符合督促程序规定条件的，可以转入督促程序；

(2) Where mediation can be carried out before a hearing, the dispute shall be promptly resolved by way of mediation;

（二）开庭前可以调解的，采取调解方式及时解决纠纷；

(3) It is determined in accordance with the circumstances of a case that the summary procedures or general procedures are applicable to the lawsuit; and

（三）根据案件情况，确定适用简易程序或者普通程序；

(4) Where a hearing is required, the litigants shall be required to define the focus of the dispute through exchange of evidence, etc.

（四）需要开庭审理的，通过要求当事人交换证据等方式，明确争议焦点。

**第三节 开庭审理****Section 3 — Open Hearing**

**第一百三十七条** 人民法院审理民事案件，除涉及国家秘密、个人隐私或者法律另有规定的以外，应当公开进行。

**Article 137** People's Courts shall try civil cases by way of open hearing, except where State secrets or personal privacy is/are involved or otherwise stipulated by the law. For a divorce case or a case which involves commercial secrets, where a litigant applies for closed hearing, the lawsuit may be tried in closed hearing.

离婚案件，涉及商业秘密的案件，当事人申请不公开审理的，可以不公开审理。

**第一百三十八条** 人民法院审理民事案件，根据需要进行巡回审理，就地办案。

**Article 138** People's Courts trying civil cases shall try cases on a roaming manner and handle cases on the spot based on the needs.

**第一百三十九条** 人民法院审理民事案件，应当在开庭三日前通知当事人和其他诉讼参与人。公开审理的，应当公告当事人姓名、案由和开庭的时间、地点。

**Article 139** People's Courts trying a civil case shall notify the litigants and other participants in proceedings three days before the hearing. For an open hearing, the name of the litigants, the cause of action and the time and venue of the hearing shall be announced.

**第一百四十条** 开庭审理前，书记员应当查明当事人和其他诉讼参与人是否到庭，宣布法庭纪律。

**Article 140** Prior to a hearing, the court clerk shall ascertain whether the litigants and other participants in proceedings will be present in court and proclaim courtroom order. At a hearing, the presiding judge or a sole judge shall verify the litigants, announce the cause of action and the list of judges, judge assistants, court clerks, etc., notify the litigants of their relevant litigation rights and obligations and inquire whether the litigants file an application for recusal.

开庭审理时，由审判长或者独任审判员核对当事人，宣布案由，宣布审判人员、法官助理、书记员

等的名单，告知当事人有关的诉讼权利义务，询问当事人是否提出回避申请。

**第一百四十一条** 法庭调查按照下列顺序进行：

（一）当事人陈述；

（二）告知证人的权利义务，证人作证，宣读未到庭的证人证言；

（三）出示书证、物证、视听资料和电子数据；

（四）宣读鉴定意见；

（五）宣读勘验笔录。

**第一百四十二条** 当事人在法庭上可以提出新的证据。

当事人经法庭许可，可以向证人、鉴定人、勘验人发问。

当事人要求重新进行调查、鉴定或者勘验的，是否准许，由人民法院决定。

**Article 141 Court investigation shall be conducted in accordance with the following sequence:** (1) Statements of litigants;

(2) Notification of witnesses of rights and obligations, testifying by witnesses, reading of testimony(ies) of witness(es) not present in the court;

(3) Presentation of documentary evidence, physical evidence, audio-visual materials and electronic data;

(4) Reading of expert opinion; and

(5) Reading of inquest records.

**Article 142 Litigants may put forward new evidence in the courtroom.** Upon consent by the court, a litigant may question a witness, expert witness or inspector.

Where a litigant requests re-investigation, re-examination or re-inspection, the People's Court shall decide whether to grant approval.



**第一百四十三条** 原告增加诉讼请求，被告提出反诉，第三人提出与本案有关的诉讼请求，可以合并审理。

**Article 143** Where the Plaintiff increases claims, the Defendant files a counterclaim, and a third party makes claims relating to this case, the People's Court may try them together.

**第一百四十四条** 法庭辩论按照下列顺序进行：

（一）原告及其诉讼代理人发言；

（二）被告及其诉讼代理人答辩；

（三）第三人及其诉讼代理人发言或者答辩；

（四）互相辩论。

法庭辩论终结，由审判长或者独任审判员按照原告、被告、第三人的先后顺序征询各方最后意见。

**Article 144** Court debate shall be conducted in accordance with the following sequence: (1) Statement by the Plaintiff and its agent ad litem;

(2) Response by the Defendant and its agent ad litem;

(3) Statement or response by the third party and its agent ad litem; and

(4) Mutual debate.

Upon conclusion of court debate, the presiding judge or the sole judge shall consult the final opinion of each party in the sequence of the Plaintiff, the Defendant and the third party.

**第一百四十五条** 法庭辩论终结，应当依法作出判决。判决前能够调解的，还可以进行调解，调解不成的，应当及时判决。

**Article 145** Upon conclusion of the court debate, the People's Court shall make a judgment pursuant to the law. Where mediation can be carried out before the judgment is made, mediation may be carried out; where mediation is unsuccessful, the court shall promptly make a judgment.

**第一百四十六条** 原告经传票

**Article 146** Where the Plaintiff refuses to be present in court

传唤，无正当理由拒不到庭的，或者未经法庭许可中途退庭的，可以按撤诉处理；被告反诉的，可以缺席判决。

**upon being served a summons and without a proper reason, or leaves the courtroom halfway without the consent of the court, the matter may be dealt with as withdrawal of lawsuit; where the Defendant files a counterclaim, the judgment in default may be made.**

**第一百四十七条** 被告经传票传唤，无正当理由拒不到庭的，或者未经法庭许可中途退庭的，可以缺席判决。

**Article 147** Where the Defendant refuses to be present in court upon being served a summons and without a proper reason or leaves the courtroom halfway without the consent of the court, the judgment in default may be made.

**第一百四十八条** 宣判前，原告申请撤诉的，是否准许，由人民法院裁定。

**Article 148** Prior to the pronouncement of the judgment, where the Plaintiff applies for withdrawal of lawsuit, the People's Court shall rule on whether to grant approval. Where the People's Court rules that withdrawal of lawsuit is not granted, the Plaintiff refuses to be present in court upon being served a summons and without a proper reason, the judgment in default may be made.

人民法院裁定不准许撤诉的，原告经传票传唤，无正当理由拒不到庭的，可以缺席判决。

**第一百四十九条** 有下列情形之一的，可以延期开庭审理：

**Article 149** Under any of the following circumstances, a hearing may be deferred:

（一）必须到庭的当事人和其他诉讼参与人有正当理由没有到庭的；

(1) Where the litigants and other participants in proceedings who are required to be present at a hearing are absent at the hearing with a proper reason;

（二）当事人临时提出回避申请的；

(2) Where the litigants submit an application for recusal impromptu;

(3) Where there is a need to notify a new witness to be present in court, investigate and collect new evidence, carry out re-examination or re-inspection, or there is a need to carry out supplementary investigation; or

(4) Any other circumstances under which a hearing should be deferred.

（三）需要通知新的证人到庭，调取新的证据，重新鉴定、勘验，或者需要补充调查的；

（四）其他应当延期的情形。

**第一百五十条** 书记员应当将法庭审理的全部活动记入笔录，由审判人员和书记员签名。

法庭笔录应当当庭宣读，也可以告知当事人和其他诉讼参与人当庭或者在五日内阅读。当事人和其他诉讼参与人认为对自己的陈述记录有遗漏或者差错的，有权申请补正。如果不予补正，应当将申请记录在案。

法庭笔录由当事人和其他诉讼参与人签名或者盖章。拒绝签名盖章的，记明情况附卷。

**第一百五十一条** 人民法院对公开审理或者不公开审理的案件，一律公开宣告判决。

当庭宣判的，应当在十日内发送判决书；定期宣判的，宣判后立

**Article 150** The court clerk shall record all activities in a hearing into the courtroom record, and the judge(s) and the court clerk shall sign thereon. The courtroom record shall be read out in court, or the litigants and other participants in proceedings may be notified of inspecting the courtroom record on the spot or within five days. Where the litigants and other participants in proceedings deemed that there is any omission or error in the record of their statement, they shall have the right to apply for supplementation or correction. Where correction or supplementation is not granted, this shall be recorded in the case file.

The litigants and other participants in proceedings shall sign or affix seal on the courtroom record. Where a litigant or participant in proceedings refuses to sign or affix seal, this shall be stated on file.

**Article 151** People's Courts shall pronounce judgment for all cases, regardless of open hearing or closed hearing. Where a judgment is pronounced in court, the written judgment shall be served within 10 days; where a judgment is pronounced on a fixed date, the written judgment shall be served forthwith upon pronouncement of judgment.

When a judgment is pronounced, the litigants shall be notified of

即发给判决书。

their rights to appeal, the appeal period and the court of appeal.

宣告判决时，必须告知当事人上诉权利、上诉期限和上诉的法院。

When a divorce judgment is pronounced, the litigants shall be notified that they shall not remarry before the judgment comes into legal effect.

宣告离婚判决，必须告知当事人在判决发生法律效力前不得另行结婚。

**第一百五十二条** 人民法院适用普通程序审理的案件，应当在立案之日起六个月内审结。有特殊情况需要延长的，经本院院长批准，可以延长六个月；还需要延长的，报请上级人民法院批准。

**Article 152** Trial of a case for which a People's Court applies general procedures for trial shall be completed within six months from the date of establishment of case file. Where there is a need for extension of time under special circumstances, upon the approval of the president of the court, an extension of time of six months may be granted; where there is a need for further extension of time, the approval of the higher-level People's Court is required.

#### 第四节 诉讼中止和终结

#### Section 4 — Suspension and Termination of Litigation

**第一百五十三条** 有下列情形之一的，中止诉讼：

**Article 153** Under any of the following circumstances, litigation shall be suspended: (1) A party to the lawsuit has passed away, there is a need to wait for the heir to express if he/she will participate in the lawsuit;

（一）一方当事人死亡，需要等待继承人表明是否参加诉讼的；

(2) A party to the lawsuit has lost the capacity to participate in proceedings and a statutory agent has not been determined;

（二）一方当事人丧失诉讼行为能力，尚未确定法定代理人的；

(3) A legal person or an organisation who is a party to the lawsuit has its operation terminated, and the bearer of its rights and obligations has not been determined;

（三）作为一方当事人的法人

(4) A party to the lawsuit is unable to participate in proceedings

或者其他组织终止，尚未确定权利义务承受人的；

（四）一方当事人因不可抗力事由，不能参加诉讼的；

（五）本案必须以另一案的审理结果为依据，而另一案尚未审结的；

（六）其他应当中止诉讼的情形。

中止诉讼的原因消除后，恢复诉讼。

due to a force majeure event;

(5) The case is required to use the outcome of the trial of another case as the basis and the trial of the other case has yet to be concluded; or

(6) Any other circumstances under which litigation should be suspended.

Upon elimination of the reason for suspension of litigation, litigation shall be resumed.

**第一百五十四条** 有下列情形之一的，终结诉讼：

（一）原告死亡，没有继承人，或者继承人放弃诉讼权利的；

（二）被告死亡，没有遗产，也没有应当承担义务的人的；

（三）离婚案件一方当事人死亡的；

（四）追索赡养费、扶养费、

**Article 154 Under any of the following circumstances, litigation shall be terminated:** (1) The Plaintiff has passed away and there is no heir or the heir has waived the litigation rights;

(2) The Defendant has passed away, there is no estate and no duty bearer;

(3) A party to a divorce case has passed away; or

(4) A party to a lawsuit for recourse of alimony, payment of maintenance, payment of upbringing or termination of adoptive relationship has passed away.

抚养费以及解除收养关系案件的一方当事人死亡的。

第五节 判决和裁定

Section 5 — Judgments and Rulings

第一百五十五条 判决书应当写明判决结果和作出该判决的理由。判决书内容包括：

**Article 155** A written judgment shall state the outcome of the judgment and the reason for making the judgment. The

**contents of a written judgment shall include:** (1) Cause of action, claim, dispute facts and reasons;

（一）案由、诉讼请求、争议的事实和理由；

(2) Facts and reasons ascertained by the judgment, applicable laws and reason;

（二）判决认定的事实和理由、适用的法律和理由；

(3) Outcome of judgment and bearing of litigation expenses; and

(4) Appeal period and court of appeal.

（三）判决结果和诉讼费用的负担；

A written judgment shall be signed by the judge(s) and the court clerk and affixed with the People's Court's seal.

（四）上诉期间和上诉的法院。

判决书由审判人员、书记员署名，加盖人民法院印章。

第一百五十六条 人民法院审理案件，其中一部分事实已经清楚，可以就该部分先行判决。

**Article 156** Where part of the facts of a case being tried by a People's Court is clear, the People's Court may pass judgment on the said part first.

第一百五十七条 裁定适用于

**Article 157** Rulings shall apply to the following scope: (1) Non-

下列范围：

acceptance of lawsuit;

(2) Objection to jurisdiction;

（一）不予受理；

(3) Rejection of lawsuit;

（二）对管辖权有异议的；

(4) Preservation and prior enforcement;

（三）驳回起诉；

(5) Approval or non-approval of withdrawal of lawsuit;

（四）保全和先予执行；

(6) Suspension or termination of litigation;

(7) Correction of clerical error in a written judgment;

（五）准许或者不准许撤诉；

(8) Suspension or termination of enforcement;

（六）中止或者终结诉讼；

(9) Revocation or non-enforcement of an arbitral award;

（七）补正判决书中的笔误；

(10) Non-enforcement of a debt instrument for which a notary public has vested mandatory enforceability; or

（八）中止或者终结执行；

(11) Any other matters which require ruling and resolution.

（九）撤销或者不予执行仲裁

An appeal may be filed for a ruling stipulated in item (1) to item (3) of the preceding paragraph.

裁决；

A ruling document shall state the ruling outcome and the reason for making the ruling. A ruling document shall be signed by the judge(s) and the court clerk and affixed with the People's Court's seal. A verbal ruling shall be recorded in writing.

（十）不予执行公证机关赋予

强制执行效力的债权文书；

（十一）其他需要裁定解决的

事项。

对前款第一项至第三项裁定，

可以上诉。

裁定书应当写明裁定结果和作

出该裁定的理由。裁定书由审判人员、书记员署名，加盖人民法院印章。口头裁定的，记入笔录。

**第一百五十八条** 最高人民法院的判决、裁定，以及依法不准上诉或者超过上诉期没有上诉的判决、裁定，是发生法律效力的判决、裁定。

**Article 158** Judgments and rulings of the Supreme People's Court, and judgments and rulings for which appeal is not allowed pursuant to the law or judgments and rulings for which an appeal is not filed within the appeal period shall be judgments and rulings which have come into legal effect.

**第一百五十九条** 公众可以查阅发生法律效力的判决书、裁定书，但涉及国家秘密、商业秘密和个人隐私的内容除外。

**Article 159** The public may inspect written judgments and ruling documents which have come into legal effect, except where the contents involve State secrets, commercial secrets and personal privacy.

### 第十三章 简易程序

### Chapter 13 — Summary Procedures

**第一百六十条** 基层人民法院和它派出的法庭审理事实清楚、权利义务关系明确、争议不大的简单的民事案件，适用本章规定。

**Article 160** The provisions of this Chapter shall apply to trial of simple civil cases with clear facts, specific rights and obligations and non-major dispute by primary People's Courts and their branches. For civil cases other than those stipulated in the preceding paragraph tried by Primary People's Courts and their branches, both litigants may agree on application of summary procedures.

基层人民法院和它派出的法庭审理前款规定以外的民事案件，当事人双方也可以约定适用简易程序。

**第一百六十一条** 对简单的民

**Article 161** With respect to a simple civil case, the Plaintiff



事案件，原告可以口头起诉。

当事人双方可以同时到基层人民法院或者它派出的法庭，请求解决纠纷。基层人民法院或者它派出的法庭可以当即审理，也可以另定日期审理。

**may file the lawsuit verbally.** Both parties to a lawsuit may go to a primary People's Court or its branch to request for resolution of dispute at the same time. The primary People's Court or its branch may try the lawsuit on the spot or fix a date for trial.

**第一百六十二条** 基层人民法院和它派出的法庭审理简单的民事案件，可以用简便方式传唤当事人和证人、送达诉讼文书、审理案件，但应当保障当事人陈述意见的权利。

**Article 162 Primary People's Courts and their branches trying simple civil cases may summon the litigants and witnesses, serve litigation documents and try the cases via simple and convenient methods, but shall protect the rights of litigants to make representation.**

**第一百六十三条** 简单的民事案件由审判员一人独任审理，并不受本法第一百三十九条、第一百四十一条、第一百四十四条规定的限制。

**Article 163 Simple civil cases shall be tried by one judge and shall not be subject to the restrictions stipulated in Article 139, Article 141 and Article 144 hereof.**

**第一百六十四条** 人民法院适用简易程序审理案件，应当在立案之日起三个月内审结。有特殊情况需要延长的，经本院院长批准，可以延长一个月。

**Article 164 A People's Court applying summary procedures for trial of a case shall complete trial within three months from the date of filing. Where it is necessary to extend the time limit under special circumstances, it may be extended by one month upon approval of the president of the court.**

**第一百六十五条** 基层人民法

院和它派出的法庭审理事实清楚、权利义务关系明确、争议不大的简单金钱给付民事案件，标的额为各省、自治区、直辖市上年度就业人员年平均工资百分之五十以下的，适用小额诉讼的程序审理，实行一审终审。

基层人民法院和它派出的法庭审理前款规定的民事案件，标的额超过各省、自治区、直辖市上年度就业人员年平均工资百分之五十但在二倍以下的，当事人双方也可以约定适用小额诉讼的程序。

**Article 165** For a simple civil lawsuit pertaining to payment of money with clear facts, specific rights and obligations relationship and non-major dispute to be tried by a primary People's Court or any tribunal dispatched by it, where the amount of the subject matter is below 50% of the annual average wage of employees in the province, autonomous region or centrally administered municipality concerned in the previous year, and the petty lawsuit procedures apply, the trial of first instance shall be final. Where a primary people's court or a tribunal dispatched by it tries a civil case as prescribed in the preceding paragraph, with the amount of subject matter exceeding 50% but less than two times the annual average wage of the employees in the province, autonomous region or centrally administered municipality concerned in the previous year, the parties concerned may also agree to apply the petty lawsuit procedure.

**第一百六十六条** 人民法院审

理下列民事案件，不适用小额诉讼的程序：

（一）人身关系、财产确权案件；

（二）涉外案件；

（三）需要评估、鉴定或者对诉前评估、鉴定结果有异议的案

**Article 166** The petty lawsuit procedures shall not apply to the trial of the following civil cases by a People's Court: (1) cases involving the confirmation of personal relations and property rights;

(2) foreign-related cases;

(3) cases that require evaluation or authentication or where objections are raised to pre-trial evaluation or authentication results;

(4) cases in which the whereabouts of one party are unknown;

(5) cases in which a party concerned files a counterclaim; and

(6) other cases to which the petty lawsuit procedures are not applicable.

件；

（四）一方当事人下落不明的

案件；

（五）当事人提出反诉的案

件；

（六）其他不宜适用小额诉讼

的程序审理的案件。

**第一百六十七条** 人民法院适用小额诉讼的程序审理案件，可以一次开庭审结并且当庭宣判。

**Article 167** A People's Court applying the petty lawsuit procedures to try a case may close the trial in one hearing and the judgment may be pronounced in court.

**第一百六十八条** 人民法院适用小额诉讼的程序审理案件，应当在立案之日起两个月内审结。有特殊情况需要延长的，经本院院长批准，可以延长一个月。

**Article 168** A People's Court applying the petty lawsuit procedures to try a case shall complete the trial within two months from the date of filing. Where there is a need for extension of time under special circumstances, upon approval of the president of the court, a one-month extension may be allowed.

**第一百六十九条** 人民法院在审理过程中，发现案件不宜适用小额诉讼的程序的，应当适用简易程序的其他规定审理或者裁定转为普通程序。

当事人认为案件适用小额诉讼

**Article 169** Where a People's Court discovers during trial that the petty lawsuit procedures are not appropriate for the case, it shall apply other provisions of summary procedures or rule on conversion of the trial to general procedures. Where a litigant believes that the application of petty lawsuit procedures to trial of the case violates the provisions of the law, it may raise an objection to the People's Court. The People's Court shall examine the objection raised by the litigant, where the objection is tenable, the People's Court shall apply other provisions of summary procedures or rule on conversion of the trial to general procedures;

的程序审理违反法律规定的，可以向人民法院提出异议。人民法院对当事人提出的异议应当审查，异议成立的，应当适用简易程序的其他规定审理或者裁定转为普通程序；异议不成立的，裁定驳回。

where the objection is untenable, the People's Court shall rule to reject it.

**第一百七十条** 人民法院在审理过程中，发现案件不宜适用简易程序的，裁定转为普通程序。

**Article 170** Where a People's Court discovers during the trial process that summary procedures are not suitable for the case on trial, the People's Court shall rule on switching to general procedures.

#### 第十四章 第二审程序

#### Chapter 14 — Procedures for Trial of Second Instance

**第一百七十一条** 当事人不服地方人民法院第一审判决的，有权在判决书送达之日起十五日内向上一级人民法院提起上诉。

**Article 171** Where a litigant disagrees with a judgment of first instance of a local People's Court, it/he has the right to file an appeal with the higher-level People's Court within 15 days from the date of service of the written judgment. Where a litigant disagrees with a ruling of first instance of a Local People's Court, it/he has the right to file an appeal with the higher-level People's Court within 10 days from the date of service of the ruling document.

当事人不服地方人民法院第一审裁定的，有权在裁定书送达之日起十日内向上一级人民法院提起上诉。

**第一百七十二条** 上诉应当递交上诉状。上诉状的内容，应当包括当事人的姓名，法人的名称及其法定代表人的姓名或者其他组织的

**Article 172** A petition for appeal shall be submitted for an appeal. The contents of a petition for appeal shall include the names of the litigants, the name of the legal person and the name of its legal representative or the name of the organisation and the name of its key person-in-charge; the name of the People's Court which originally heard the case, reference number and cause of action of the case; the appeal

名称及其主要负责人的姓名；原审  
人民法院名称、案件的编号和案  
由；上诉的请求和理由。

**request(s) and reason(s).**

**第一百七十三条** 上诉状应当  
通过原审人民法院提出，并按照对  
方当事人或者代表人的人数提出副  
本。

**Article 173** A petition for appeal shall be made through the People's Court which originally heard the case, and the number of duplicate copies shall be based on the number of the counterparty litigants or the number of the counterparty's representatives. Where a litigant file an appeal with the People's Court of second instance directly, the People's Court of second instance shall forward the petition for appeal to the People's Court which originally heard the case within five days.

当事人直接向第二审人民法院  
上诉的，第二审人民法院应当在五  
日内将上诉状移交原审人民法院。

**第一百七十四条** 原审人民法  
院收到上诉状，应当在五日内将上  
诉状副本送达对方当事人，对方当  
事人在收到之日起十五日内提出答  
辩状。人民法院应当在收到答辩状  
之日起五日内将副本送达上诉人。  
对方当事人不提出答辩状的，不影  
响人民法院审理。

**Article 174** Upon receipt of the petition for appeal, the People's Court which originally heard the case shall serve the duplicate copy of the petition for appeal on the counterparty litigant within five days, the counterparty litigant shall submit a pleading within 15 days from the date of receipt of the petition. The People's Court shall serve the duplicate copy of the pleading on the appellant within five days from the date of receipt of the pleading. Non-submission of pleading by the counterparty litigant will not affect trial of the petition by the People's Court. Upon receipt of the petition for appeal, the People's Court which originally heard the case shall submit the petition for appeal together with all case files and evidence to the People's Court of second instance within five days.

原审人民法院收到上诉状、答  
辩状，应当在五日内连同全部案卷  
和证据，报送第二审人民法院。

**第一百七十五条** 第二审人民

**Article 175** The People's Court of second instance shall examine the relevant facts and applicable laws for the appeal

法院应当对上诉请求的有关事实和适用法律进行审查。

**request(s).**

**第一百七十六条** 第二审人民法院对上诉案件应当开庭审理。经过阅卷、调查和询问当事人，对没有提出新的事实、证据或者理由，人民法院认为不需要开庭审理的，可以不开庭审理。

第二审人民法院审理上诉案件，可以在本院进行，也可以到案件发生地或者原审人民法院所在地进行。

**Article 176** A People's Court of second instance shall conduct a hearing to try an appeal case. Upon examination of case files, investigation and questioning of litigants, where there is no new fact, evidence or reason, and the people's court deems that a hearing is not necessary, the case may be tried without a hearing. The People's Court of second instance may try an appeal case at the court or try the case at the place of occurrence of the case or the location of the People's Court which originally heard the case.

**第一百七十七条** 第二审人民法院对上诉案件，经过审理，按照下列情形，分别处理：

（一）原判决、裁定认定事实清楚，适用法律正确的，以判决、裁定方式驳回上诉，维持原判决、裁定；

（二）原判决、裁定认定事实错误或者适用法律错误的，以判决、裁定方式依法改判、撤销或者

**Article 177** The People's Court of second instance shall, upon trial of an appeal case, take the following action in accordance with the following circumstances: (1) Where the facts

ascertained in the original judgment or ruling are clear, and the application of laws is correct, the appeal shall be rejected by way of a judgment or ruling, and the original judgment or ruling shall be upheld;

(2) Where the facts ascertained in the original judgment or ruling are wrong or the application of laws is wrong, the original judgment shall be amended, revoked or modified by way of a judgment or ruling;

(3) Where the basic facts ascertained in the original judgment are unclear, the People's Court of second instance shall rule that the original judgment be revoked, the case shall be remanded to the People's Court which originally heard the case for re-trial, or the

变更；

original judgment shall be amended upon ascertainment of facts;  
and

（三）原判决认定基本事实不清的，裁定撤销原判决，发回原审人民法院重审，或者查清事实后改判；

(4) Where a litigant is omitted in the original judgment or the judgment in default is passed illegally which violates statutory procedures seriously, the People's Court of second instance shall rule that the original judgment be revoked, and the case shall be remanded to the People's Court which originally heard the case for re-trial.

（四）原判决遗漏当事人或者违法缺席判决等严重违反法定程序的，裁定撤销原判决，发回原审人民法院重审。

Where the People's Court which originally heard the case has made a judgment on a remanded case, and the litigants file an appeal, the People's Court of second instance shall not remand the case for re-trial again.

原审人民法院对发回重审的案件作出判决后，当事人提起上诉的，第二审人民法院不得再次发回重审。

**第一百七十八条** 第二审人民法院对不服第一审人民法院裁定的上诉案件的处理，一律使用裁定。

**Article 178** The People's Court of second instance shall make rulings in all cases for handling of appeal cases against rulings of the People's Court of first instance.

**第一百七十九条** 第二审人民法院审理上诉案件，可以进行调解。调解达成协议，应当制作调解书，由审判人员、书记员署名，加盖人民法院印章。调解书送达后，原审人民法院的判决即视为撤销。

**Article 179** The People's Court of second instance may carry out mediation in the trial of an appeal case. Where an agreement is reached through mediation, a mediation document shall be prepared; the mediation document shall be signed by the judge(s) and the court clerk and affixed with the People's Court's seal. Upon service of the mediation document, the judgment of the People's Court which originally heard the case shall be deemed revoked.



<p><b>第一百八十条</b> 第二审人民法院判决宣告前，上诉人申请撤回上诉的，是否准许，由第二审人民法院裁定。</p>	<p><b>Article 180</b> Prior to announcement of the judgment of the People's Court of second instance, where the appellant applies for withdrawal of appeal, the People's Court of second instance shall rule on whether to grant withdrawal of appeal.</p>
<p><b>第一百八十一条</b> 第二审人民法院审理上诉案件，除依照本章规定外，适用第一审普通程序。</p>	<p><b>Article 181</b> In addition to the provisions of this Chapter, the general procedures for trial of first instance shall apply to trial of the appeal case by the People's Court of second instance.</p>
<p><b>第一百八十二条</b> 第二审人民法院的判决、裁定，是终审的判决、裁定。</p>	<p><b>Article 182</b> The judgment or ruling of the People's Court of second instance shall be the final judgment or ruling.</p>
<p><b>第一百八十三条</b> 人民法院审理对判决的上诉案件，应当在第二审立案之日起三个月内审结。有特殊情况需要延长的，由本院院长批准。</p>	<p><b>Article 183</b> A People's Court trying an appeal case against a judgment shall complete the trial within three months from the date of establishment of case file for the trial of second instance. Where there is a need for extension of time under special circumstances, the approval of the president of the court is required. A People's Court trying an appeal case against a ruling shall make a ruling of final instance within 30 days from the date of establishment of case file for the trial of second instance.</p>
<p>人民法院审理对裁定的上诉案件，应当在第二审立案之日起三十日内作出终审裁定。</p>	
<p><b>第十五章 特别程序</b></p>	<p><b>Chapter 15 — Special Procedures</b></p>
<p><b>第一节 一般规定</b></p>	<p><b>Section 1 — General Provisions</b></p>
<p><b>第一百八十四条</b> 人民法院审</p>	<p><b>Article 184</b> The provisions of this Chapter shall apply to trial by People's Courts of electoral qualification cases, cases of</p>



理选民资格案件、宣告失踪或者宣告死亡案件、指定遗产管理人案件、认定公民无民事行为能力或者限制民事行为能力案件、认定财产无主案件、确认调解协议案件和实现担保物权案件，适用本章规定。本章没有规定的，适用本法和其他法律的有关规定。

**declaring persons missing or dead, cases of appointment of estate administrator, cases of ascertainment of citizens with no capacity for civil conduct or with limited capacity for civil conduct, cases of ascertainment of ownerless property, cases of confirmation of mediation agreement and cases of realisation of security interest. For matters not covered in this Chapter, the relevant provisions of this Law and other laws shall apply.**

**第一百八十五条** 依照本章程序审理的案件，实行一审终审。选民资格案件或者重大、疑难的案件，由审判员组成合议庭审理；其他案件由审判员一人独任审理。

**Article 185 Cases tried pursuant to the procedures stipulated in this Chapter shall implement trial of first instance being final. Voter eligibility cases, major and complex cases shall be tried by a collegiate bench formed by the judges; other cases shall be tried by one judge.**

**第一百八十六条** 人民法院在依照本章程序审理案件的过程中，发现本案属于民事权益争议的，应当裁定终结特别程序，并告知利害关系人可以另行起诉。

**Article 186 Where a People's Court discovers during the process of trial of a case pursuant to the procedures in this Chapter that the case is a dispute over civil rights and interests, the People's Court shall rule on termination of special procedure, and notify the interested parties to file a separate lawsuit.**

**第一百八十七条** 人民法院适用特别程序审理的案件，应当在立案之日起三十日内或者公告期满后三十日内审结。有特殊情况需要延长的，由本院院长批准。但审理选

**Article 187 The trial of a case for which special procedures are applicable by a People's Court shall be completed within 30 days from the date of establishment of case file or within 30 days from expiry of the public announcement period. Where there is a need for extension of time under special circumstances, the approval of the president of the court is required, except for trial of voter eligibility cases.**

民资格的案件除外。

第二节 选民资格案件

Section 2 — Voter Eligibility Cases

第一百八十八条 公民不服选举委员会对选民资格的申诉所作的处理决定，可以在选举日的五日以前向选区所在地基层人民法院起诉。

**Article 188** A citizen who disagrees with a decision made by the Electoral Commission in respect of handling of complaint of voter eligibility may file a lawsuit with the primary People's Court at the location of the electoral district five days before the election day.

第一百八十九条 人民法院受理选民资格案件后，必须在选举日前审结。

**Article 189** Upon acceptance of a voter eligibility case, the People's Court shall complete the trial before the election day. During the trial, the party which files the lawsuit, the representatives of the Electoral Commission and the relevant citizen shall participate.

审理时，起诉人、选举委员会的代表和有关公民必须参加。

The written judgment of the People's Court shall be served on the Electoral Commission and the party which files the lawsuit before the election day and notify the relevant citizen.

人民法院的判决书，应当在选举日前送达选举委员会和起诉人，并通知有关公民。

第三节 宣告失踪、宣告死亡案件

Section 3 — Cases of Declaration of Missing or Death

第一百九十条 公民下落不明满二年，利害关系人申请宣告其失踪的，向下落不明人住所地基层人民法院提出。

**Article 190** Where a citizen has been missing for two years, an interested party may submit an application for declaration of missing to a primary People's Court at the place of residence of the missing person. The written application shall state the fact of the missing person, time and request, and be supported by a written certificate of missing person issued by the public security authorities or other relevant authorities in respect of the said

申请书应当写明失踪的事实、时间和请求，并附有公安机关或者其他有关机关关于该公民下落不明的书面证明。

citizen.

**第一百九十一条** 公民下落不明满四年，或者因意外事件下落不明满二年，或者因意外事件下落不明，经有关机关证明该公民不可能生存，利害关系人申请宣告其死亡的，向下落不明人住所地基层人民法院提出。

**Article 191** Where a citizen has been missing for four years, or has been missing for two years due to an accidental event, or has been missing due to an accidental event, upon certification by the relevant authorities that the citizen is unlikely to be alive, an interested party may submit an application for declaration of death to the primary People's Court at the place of residence of the missing person. The written application shall state the fact of the missing person, time and request, and be supported by a written certificate of missing person issued by the public security authorities or other relevant authorities in respect of the said citizen.

申请书应当写明下落不明的事实、时间和请求，并附有公安机关或者其他有关机关关于该公民下落不明的书面证明。

**第一百九十二条** 人民法院受理宣告失踪、宣告死亡案件后，应当发出寻找下落不明人的公告。宣告失踪的公告期间为三个月，宣告死亡的公告期间为一年。因意外事件下落不明，经有关机关证明该公民不可能生存的，宣告死亡的公告期间为三个月。

**Article 192** Upon acceptance of a case for declaration of missing person or declaration of death, the People's Court shall make a public announcement on search for missing person. The public announcement period for declaration of missing person shall be three months, the public announcement period for declaration of death shall be one year. Where a citizen has been missing due to an accidental event and upon certification by the relevant authorities that the said citizen is unlikely to be alive, the public announcement period for declaration of death shall be three months. Upon expiry of the public announcement period, the People's Court shall make a judgment on declaration of missing

公告期间届满，人民法院应当根据被宣告失踪、宣告死亡的事实是否得到确认，作出宣告失踪、宣告死亡的判决或者驳回申请的判决。

person or declaration of death based on whether the facts for declaration of missing person or declaration of death are confirmed or make a judgment on rejection of the application.

**第一百九十三条** 被宣告失踪、宣告死亡的公民重新出现，经本人或者利害关系人申请，人民法院应当作出新判决，撤销原判决。

**Article 193** Where a citizen who has been declared missing or dead reappears, upon application by the citizen or an interested party, the People's Court shall make a new judgment, and revoke the original judgment.

#### 第四节 指定遗产管理人案件

#### Section 4 Cases Concerning the Designation of Estate Administrators

**第一百九十四条** 对遗产管理人的确定有争议，利害关系人申请指定遗产管理人的，向被继承人死亡时住所地或者主要遗产所在地基层人民法院提出。

**Article 194** Where there is a dispute over the determination of an estate administrator, an interested party applying for the appointment of the estate administrator shall file an application with the primary people's court at the domicile of the deceased at the time of death or the location of the main estate. The written application shall specify the time of death of the deceased, application reasons and specific requests, with the relevant evidence of the death of the deceased attached.

申请书应当写明被继承人死亡的时间、申请事由和具体请求，并附有被继承人死亡的相关证据。

**第一百九十五条** 人民法院受理申请后，应当审查核实，并按照有利于遗产管理的原则，判决指定遗产管理人。

**Article 195** The people's court shall, upon acceptance of an application, examine and verify the application and make a judgment for appointment of the estate administrator under the principle of facilitation of estate administration.

**第一百九十六条** 被指定的遗产管理人死亡、终止、丧失民事行为能力或者存在其他无法继续履行遗产管理职责情形的，人民法院可以根据利害关系人或者本人的申请另行指定遗产管理人。

**Article 196** Where the designated estate administrator has died, terminated, lost civil capacity or is otherwise unable to continue to perform the estate administration duties, the people's court may designate another estate administrator pursuant to the application of an interested party or the estate administrator.

**第一百九十七条** 遗产管理人违反遗产管理职责，严重侵害继承人、受遗赠人或者债权人合法权益的，人民法院可以根据利害关系人的申请，撤销其遗产管理人资格，并依法指定新的遗产管理人。

**Article 197** Where an estate administrator violates the duties of estate administration and seriously infringes upon the legitimate rights and interests of the successors, legatees or creditors, the people's court may, upon the application of an interested party, disqualify the estate administrator and designate a new estate administrator pursuant to the law.

## **第五节 认定公民无民事行为能力、限制民事行为能力案件**

## **Section 5 — Cases of Identification of Citizen with No Capacity for Civil Conduct or Limited Capacity for Civil Conduct**

**第一百九十八条** 申请认定公民无民事行为能力或者限制民事行为能力，由利害关系人或者有关组织向该公民住所地基层人民法院提出。

**Article 198** An application for identification of a citizen with no capacity for civil conduct or limited capacity for civil conduct shall be submitted to the primary People's Court at the place of the citizen's residence by any interested party or the organisation concerned. The written application shall state the fact and basis that the citizen has no capacity for civil conduct or limited capacity for civil conduct.

申请书应当写明该公民无民事行为能力或者限制民事行为能力的事实和根据。

**第一百九十九条** 人民法院受理申请后，必要时应当对被请求认定为无民事行为能力或者限制民事行为能力能力的公民进行鉴定。申请人已提供鉴定意见的，应当对鉴定意见进行审查。

**第二百条** 人民法院审理认定公民无民事行为能力或者限制民事行为能力能力的案件，应当由该公民的近亲属为代理人，但申请人除外。近亲属互相推诿的，由人民法院指定其中一人为代理人。该公民健康状况许可的，还应当询问本人的意见。

人民法院经审理认定申请有事实根据的，判决该公民为无民事行为能力或者限制民事行为能力人；认定申请没有事实根据的，应当判决予以驳回。

**第二百零一条** 人民法院根据被认定为无民事行为能力人、限制民事行为能力人本人、利害关系人或者有关组织的申请，证实该公民

**Article 199** Upon acceptance of an application, the People's Court shall, when necessary, conduct an appraisal on the citizen for whom the application for identification of no capacity for civil conduct or limited capacity for civil conduct is made. Where the applicant has provided an appraisal opinion, the appraisal opinion shall be examined.

**Article 200** In the trial of a case for identification of a citizen with no capacity for civil conduct or limited capacity for civil conduct by a People's Court, the close relatives of the said citizen other than the applicant shall act as his/her agent. Where the close relatives of the citizen try to shirk responsibilities, the People's Court shall designate one of them to act as the agent. Where the health conditions of the said citizen permit, the People's Court shall seek his/her opinion. Where a People's Court tried the case and held that an application for identification is based on facts, the People's Court shall rule that the citizen has no capacity for civil conduct or limited capacity for civil conduct; where the People's Court held that the application is not based on facts, the People's Court shall rule that the application be rejected.

**Article 201** Where a People's Court, based on an application by a person held to have no capacity for civil conduct or limited capacity for civil conduct or the application by his/her guardian, confirms that the reason that a citizen has no capacity for civil conduct or limited capacity for civil conduct is eliminated, the People's Court shall make a new judgment

无民事行为能力或者限制民事行为能力的原因已经消除的，应当作出新判决，撤销原判决。

and revoke the original judgment.

## 第六节 认定财产无主案件

## Section 6 — Cases of Determination of Ownerless Property

**第二百零二条** 申请认定财产无主，由公民、法人或者其他组织向财产所在地基层人民法院提出。申请书应当写明财产的种类、数量以及要求认定财产无主的根据。

**Article 202** An application for determination of ownerless property shall be submitted by a citizen, a legal person or an organisation to the primary People's Court at the location of the property. The written application shall state the type and quantity of the property and the basis for the request for ascertainment of ownerless property.

**第二百零三条** 人民法院受理申请后，经审查核实，应当发出财产认领公告。公告满一年无人认领的，判决认定财产无主，收归国家或者集体所有。

**Article 203** Upon acceptance of an application, the People's Court shall, upon examination and verification, make a public announcement on claim of property. Where the property is not claimed within one year from public announcement, the People's Court shall rule that the property is ownerless and is State-owned or collectively owned.

**第二百零四条** 判决认定财产无主后，原财产所有人或者继承人出现，在民法典规定的诉讼时效期间可以对财产提出请求，人民法院审查属实后，应当作出新判决，撤销原判决。

**Article 204** Following the judgment that the property is ownerless, the original owner of the property or the successor which appears may make a request for the property within the limitation of action stipulated in the Civil Code, upon examination and verification by the People's Court, a new judgment shall be made and the original judgment shall be revoked.

## 第七节 确认调解协议案件

## Section 7 — Cases of Confirmation of A Mediation Agreement

**第二百零五条** 经依法设立的

**Article 205** Where a mediation agreement is reached upon mediation by a mediation organisation established pursuant



调解组织调解达成调解协议，申请司法确认的，由双方当事人自调解协议生效之日起三十日内，共同向下列人民法院提出：

（一）人民法院邀请调解组织开展先行调解的，向作出邀请的人民法院提出；

（二）调解组织自行开展调解的，向当事人住所地、标的物所在地、调解组织所在地的基层人民法院提出；调解协议所涉纠纷应当由中级人民法院管辖的，向相应的中级人民法院提出。

**to the law and an application for judicial confirmation is made, both parties to the lawsuit shall submit an application jointly to the following people's court within 30 days from the effective date of the mediation agreement:** (1) where a people's court invites a mediation organisation to conduct prior mediation, the application shall be made to the inviting people's court; and

(2) where a mediation organisation conducts mediation on its own initiative, the application shall be made to the primary People's Court at the location of the litigant's domicile, the subject matter or the mediation organisation; where the dispute involved in the mediation agreement is subject to the jurisdiction of an intermediate People's Court, the application shall be made to the corresponding intermediate people's court.

**第二百零六条** 人民法院受理申请后，经审查，符合法律规定的，裁定调解协议有效，一方当事人拒绝履行或者未全部履行的，对方当事人可以向人民法院申请执行；不符合法律规定的，裁定驳回申请，当事人可以通过调解方式变更原调解协议或者达成新的调解协议，也可以向人民法院提起诉讼。

**Article 206** Upon acceptance of an application, the People's Court shall rule that the mediation agreement is valid upon examination that the application complies with the provisions of the laws; where one party concerned refuses to perform the mediation agreement or where the mediation agreement is not performed fully, the counterparty may apply to the People's Court for enforcement; where the application does not comply with the provisions of the laws, the People's Court shall rule that the application be rejected, the litigants may amend the original mediation agreement through mediation or enter into a new mediation agreement, or file a lawsuit with the People's Court.

## 第八节 实现担保物权案件

## Section 8 — Cases of Realisation of Security Interest



**第二百零七条** 申请实现担保

物权，由担保物权人以及其他有权请求实现担保物权的人依照民法典等法律，向担保财产所在地或者担保物权登记地基层人民法院提出。

**Article 207** An application for realisation of security interest shall be submitted by the holder of security interest and any other person(s) who has/have the right to request for realisation of security interest to the primary People's Court at the location of the secured property or the place of registration of security interest pursuant to the Civil Code and other pertinent laws, etc.

**第二百零八条** 人民法院受理

申请后，经审查，符合法律规定的，裁定拍卖、变卖担保财产，当事人依据该裁定可以向人民法院申请执行；不符合法律规定的，裁定驳回申请，当事人可以向人民法院提起诉讼。

**Article 208** Upon acceptance of an application, the People's Court shall, upon examination that the application complies with the provisions of the laws, rule that the secured property be auctioned or sold off, the litigants may apply to the People's Court for enforcement pursuant to the said ruling; where the application does not comply with the provisions of the laws, the People's Court shall rule that the application be rejected, the litigants may file a lawsuit with the People's Court.

**第十六章 审判监督程序****Chapter 16 — Procedures for Trial Supervision****第二百零九条** 各级人民法院

院长对本院已经发生法律效力判决、裁定、调解书，发现确有错误，认为需要再审的，应当提交审判委员会讨论决定。

**Article 209** Where the president of a People's Court at any level discovers an error in a written judgment, ruling document or mediation document of this court which has come into legal effect and deemed that there is a need for re-trial, the matter shall be submitted to the Adjudication Committee for discussion and decision. Where the Supreme People's Court discovers an error in a written judgment, ruling document or mediation document of a Local People's Court at any level which has come into legal effect, or where a higher-level People's Court discovers an error in a written judgment, ruling document or mediation document of a lower-level People's Court which has come into legal effect, it shall have the right to arraign or order the lower-level People's Court to re-try the case.

最高人民法院对地方各级人民法院已经发生法律效力的判决、裁定、调解书，上级人民法院对下级人民法院已经发生法律效力的判决、裁定、调解书，发现确有错误

的，有权提审或者指令下级人民法院再审。

**第二百一十条** 当事人对已经发生法律效力的判决、裁定，认为有错误的，可以向上一级人民法院申请再审；当事人一方人数众多或者当事人双方为公民的案件，也可以向原审人民法院申请再审。当事人申请再审的，不停止判决、裁定的执行。

**Article 210** A litigant who deemed that there is an error in a judgment or ruling which has come into legal effect may apply to the higher-level People's Court for re-trial; for cases for which one party to the lawsuit comprises multiple persons or both parties to the lawsuit are citizens, an application for re-trial may be submitted to the People's Court which originally heard the case. Where the litigants apply for re-trial, enforcement of the judgment or ruling shall continue.

**第二百一十一条** 当事人的申请符合下列情形之一的，人民法院应当再审：

（一）有新的证据，足以推翻原判决、裁定的；

（二）原判决、裁定认定的基本事实缺乏证据证明的；

（三）原判决、裁定认定事实的主要证据是伪造的；

（四）原判决、裁定认定事实的主要证据未经质证的；

**Article 211** Where the application of the litigants satisfies any of the following circumstances, the People's Court shall conduct a re-trial: (1) There is adequate new evidence to overturn the original judgment or ruling;

(2) There is lack of evidence for the basic facts ascertained in the original judgment or ruling;

(3) The main evidence for the facts ascertained in the original judgment or ruling is forged;

(4) The main evidence for the facts ascertained in the original judgment or ruling has not been cross-examined;

(5) Where the litigants are unable to gather the main evidence required for trial of the case due to objective reasons, the litigants have submitted a written application to the People's Court for investigation and gathering of evidence, and the People's Court does not carry out investigation and gathering of evidence;

(6) The application of laws by the original judgment or ruling is

- （五）对审理案件需要的主要证据，当事人因客观原因不能自行收集，书面申请人民法院调查收集，人民法院未调查收集的；
- （六）原判决、裁定适用法律确有错误的；
- （七）审判组织的组成不合法或者依法应当回避的审判人员没有回避的；
- （八）无诉讼行为能力人未经法定代理人代为诉讼或者应当参加诉讼的当事人，因不能归责于本人或者其诉讼代理人的事由，未参加诉讼的；
- （九）违反法律规定，剥夺当事人辩论权利的；
- （十）未经传票传唤，缺席判决的；
- （十一）原判决、裁定遗漏或者超出诉讼请求的；
- （十二）据以作出原判决、裁
- wrong;
- (7) The composition of the trial organisation is illegal or a judge who should abstain from the lawsuit pursuant to the law does not abstain;
- (8) A person with no capacity for litigation action is unable to participate in proceedings as he/she is not represented by a legal representative or a litigant who should participate in proceedings is unable to participate in proceedings due to any reason not attributable to himself/herself or his/her agent ad litem;
- (9) A litigant's right to debate is deprived in violation of the provisions of the laws;
- (10) Judgment in default is made in the absence of a litigant who has not been served a summons;
- (11) The original judgment or ruling has omitted or exceeded a claim;
- (12) The legal document on which the original judgment or ruling is based is revoked or modified; or
- (13) The judge(s) has/have committed corruption, favouritism or perverted the law in making a judgment during the trial of the case.

定的法律文书被撤销或者变更的；

（十三）审判人员审理该案件时有贪污受贿，徇私舞弊，枉法裁判行为的。

**第二百一十二条** 当事人对已经发生法律效力调解书，提出证据证明调解违反自愿原则或者调解协议的内容违反法律的，可以申请再审。经人民法院审查属实的，应当再审。

**Article 212** Where a litigant presents evidence to prove that the mediation for a mediation document which has come into legal effect has violated the principle of voluntary participation or the contents of the mediation agreement have violated the laws, an application for re-trial may be submitted. Upon examination and verification by the People's Court, a re-trial shall be carried out.

**第二百一十三条** 当事人对已经发生法律效力的解除婚姻关系的判决、调解书，不得申请再审。

**Article 213** For a judgment or mediation document for dissolution of marriage which has come into legal effect, the litigants shall not apply for re-trial.

**第二百一十四条** 当事人申请再审的，应当提交再审申请书等材料。人民法院应当自收到再审申请书之日起五日内将再审申请书副本发送对方当事人。对方当事人应当自收到再审申请书副本之日起十五日内提交书面意见；不提交书面意见的，不影响人民法院审查。人民法院可以要求申请人和对方当事人补充有关材料，询问有关事项。

**Article 214** A litigant applying for re-trial shall submit materials such as a written application for re-trial, etc. The People's Court shall serve the duplicate copy of the written application for re-trial to the counterparty within five days from the date of receipt of the written application for re-trial. The counterparty shall submit a written opinion within 15 days from the date of receipt of the duplicate copy of the written application for re-trial; non-submission of a written opinion shall not affect examination by the People's Court. The People's Court may require the applicant and the counterparty to supplement the relevant materials and enquire into the relevant matters.

**第二百一十五条** 人民法院应当自收到再审申请书之日起三个月内审查，符合本法规定的，裁定再审；不符合本法规定的，裁定驳回申请。有特殊情况需要延长的，由本院院长批准。

因当事人申请裁定再审的案件由中级人民法院以上的人民法院审理，但当事人依照本法第二百一十条的规定选择向基层人民法院申请再审的除外。最高人民法院、高级人民法院裁定再审的案件，由本院再审或者交其他人民法院再审，也可以交原审人民法院再审。

**第二百一十六条** 当事人申请再审，应当在判决、裁定发生法律效力后六个月内提出；有本法第二百一十一条第一项、第三项、第十二项、第十三项规定情形的，自知道或者应当知道之日起六个月内提出。

**第二百一十七条** 按照审判监督程序决定再审的案件，裁定中止

**Article 215** The People's Court shall conduct examination within three months from the date of receipt of the written application for re-trial, where the application complies with the provisions hereof, the People's Court shall rule on re-trial; where the application does not comply with the provisions hereof, the People's Court shall rule that the application be rejected. Under special circumstances where there is a need for an extension of time, the approval of the president of the court is required. Cases ruled to be re-tried in accordance with an application by the litigants shall be tried by an intermediate People's Court or above, except for applications for re-trial of cases submitted by litigants to primary People's Courts pursuant to the provisions of Article 206 hereof. Cases ruled by the Supreme People's Court or a higher People's Court to be re-tried shall be re-tried by the Supreme People's Court or the higher People's Court or handed over to another People's Court for re-trial, or remanded to the People's Court which originally heard the case for re-trial.

**Article 216** A litigant applying for re-trial shall submit the application within six months from a judgment or ruling taking legal effect; under the circumstances stipulated in item (1), (3), (12), or (13) of Article 211 hereof, the application shall be submitted within six months from the date on which the litigant becomes or should become aware of the circumstances.

**Article 217** In the event of a case for which re-trial is decided pursuant to the procedure for trial supervision, a ruling on suspension of enforcement of the original judgment, ruling,

原判决、裁定、调解书的执行，但追索赡养费、扶养费、抚养费、抚恤金、医疗费用、劳动报酬等案件，可以不中止执行。

**mediation document shall be made, however, for cases of recourse of alimony, payment of maintenance, payment of upbringing, pension, medical fees, labour remuneration, etc., enforcement may not be suspended.**

**第二百一十八条** 人民法院按照审判监督程序再审的案件，发生法律效力判决、裁定是由第一审法院作出的，按照第一审程序审理，所作的判决、裁定，当事人可以上诉；发生法律效力判决、裁定是由第二审法院作出的，按照第二审程序审理，所作的判决、裁定，是发生法律效力的判决、裁定；上级人民法院按照审判监督程序提审的，按照第二审程序审理，所作的判决、裁定是发生法律效力的判决、裁定。

**Article 218** In the event of a case subject to re-trial by a People's Court pursuant to the procedure for trial supervision, where the judgment or ruling which has come into legal effect is made by the court of first instance, the case shall be tried pursuant to the procedure for trial of first instance, the litigants may file an appeal for the judgment or ruling; where the judgment or ruling which has come into legal effect is made by the court of second instance, the case shall be tried pursuant to the procedure for trial of second instance, the judgment or ruling is a judgment or ruling which has come into legal effect; where the case is arraigned by a higher-level People's Court pursuant to the procedure for trial supervision, the case shall be tried pursuant to the procedure for trial of second instance, the judgment or ruling is a judgment or ruling which has come into legal effect. A People's Court trying a re-trial case shall form a collegiate bench separately.

人民法院审理再审案件，应当另行组成合议庭。

**第二百一十九条** 最高人民检察院对各级人民法院已经发生法律效力的判决、裁定，上级人民检察院对下级人民法院已经发生法律效

**Article 219** Where the Supreme People's Procuratorate discovers that a judgment or ruling of a People's Court at any level which has come into legal effect falls under any of the circumstances stipulated in Article 207 hereof or discovers that a mediation document harms national interest or public interest, or where a higher-level People's Procuratorate

力的判决、裁定，发现有本法第二百一十一条规定情形之一的，或者发现调解书损害国家利益、社会公共利益的，应当提出抗诉。

地方各级人民检察院对同级人民法院已经发生法律效力的判决、裁定，发现有本法第二百一十一条规定情形之一的，或者发现调解书损害国家利益、社会公共利益的，可以向同级人民法院提出检察建议，并报上级人民检察院备案；也可以提请上级人民检察院向同级人民法院提出抗诉。

各级人民检察院对审判监督程序以外的其他审判程序中审判人员的违法行为，有权向同级人民法院提出检察建议。

**第二百二十条** 有下列情形之一的，当事人可以向人民检察院申请检察建议或者抗诉：

（一）人民法院驳回再审申请的；

**discovers that a judgment or ruling of a lower-level People's Court which has come into legal effect falls under any of the circumstances stipulated in Article 211 hereof or discovers that a mediation document harms national interest or public interest, a protest shall be made.** Where a People's Procuratorate at any level at any locality discovers that a judgment or ruling made by a People's Court of counterpart level which has come into legal effect falls under any of the circumstances stipulated in Article 211 hereof, or discovers that a mediation document harms national interest and public interest, the People's Procuratorate may make an attorney recommendation to the People's Court of counterpart level, and file record with the higher-level People's Procuratorate; or request the higher-level People's Procuratorate to make a protest to the People's Court of counterpart level.

The People's Procuratorate at any level shall have the right to make an attorney recommendation to the People's Court of counterpart level for any illegal act of a judge committed in any trial procedure other than the procedure for trial supervision.

**Article 220 Under any of the following circumstances, a litigant may apply to a People's Procuratorate for attorney recommendation or make a protest:** (1) A People's Court has rejected an application for re-trial;

(2) A People's Court has not made a ruling on an application for re-trial within the stipulated period; or

(3) There is an obvious mistake in a re-trial judgment or ruling.



（二）人民法院逾期未对再审申请作出裁定的；

（三）再审判决、裁定有明显错误的。

人民检察院对当事人的申请应当在三个月内进行审查，作出提出或者不予提出检察建议或者抗诉的决定。当事人不得再次向人民检察院申请检察建议或者抗诉。

A People's Procuratorate shall examine an application from a litigant within three months and decide whether to make an attorney recommendation or protest. The litigant shall not apply to the People's Procuratorate again for an attorney recommendation or protest.

**第二百二十一条** 人民检察院因履行法律监督职责提出检察建议或者抗诉的需要，可以向当事人或者案外人调查核实有关情况。

**Article 221** A People's Procuratorate may investigate into or verify with a litigant or a non-party to the case the relevant information for the need to make an attorney recommendation or protest for performance of legal supervision duties.

**第二百二十二条** 人民检察院提出抗诉的案件，接受抗诉的人民法院应当自收到抗诉书之日起三十日内作出再审的裁定；有本法第二百一十一条第一项至第五项规定情形之一的，可以交下一级人民法院再审，但经该下一级人民法院再审的除外。

**Article 222** In the event of a case for which a protest is made by a People's Procuratorate, the People's Court which receives the protest shall rule on re-trial within 30 days from the date of receipt of the protest letter; under any of the circumstances stipulated in item (1) to item (5) of Article 211 hereof, the case may be handed over to a lower-level People's Court for re-trial, except where the case has been retried by the said lower-level People's Court.

**第二百二十三条** 人民检察院

**Article 223** Where a People's Procuratorate has decided to make a protest against a judgment, ruling or mediation

决定对人民法院的判决、裁定、调解书提出抗诉的，应当制作抗诉书。

**document of a People's Court, the People's Procuratorate shall prepare a protest letter.**

**第二百二十四条** 人民检察院提出抗诉的案件，人民法院再审时，应当通知人民检察院派员出席法庭。

**Article 224** In the event of a case for which a protest is made by a People's Procuratorate, the People's Court shall notify the People's Procuratorate to assign personnel to be present in court when the People's Court re-tries the case.

## 第十七章 督促程序

## Chapter 17 — Procedures of Supervision and Urge

**第二百二十五条** 债权人请求债务人给付金钱、有价证券，符合下列条件的，可以向有管辖权的基层人民法院申请支付令：

**Article 225** Where a creditor requesting for payment of money and securities by a debtor satisfies the following criteria, the creditor may apply to a primary People's Court which has jurisdiction for an order of payment: (1) There is no other debt dispute between the creditor and the debtor; or

(2) The order of payment can be served on the debtor.

（一）债权人与债务人没有其他债务纠纷的；

The written application shall state the amount of the money or the quantity of securities for which payment is requested and the facts and evidence on which the request is based.

（二）支付令能够送达债务人的。

申请书应当写明请求给付金钱或者有价证券的数量和所根据的事实、证据。

**第二百二十六条** 债权人提出申请后，人民法院应当在五日内通

**Article 226** Upon submission of an application by a creditor, the People's Court shall notify the creditor within five days on whether the application is accepted.

知债权人是否受理。

**第二百二十七条** 人民法院受理申请后，经审查债权人提供的事实、证据，对债权债务关系明确、合法的，应当在受理之日起十五日内向债务人发出支付令；申请不成立的，裁定予以驳回。

债务人应当自收到支付令之日起十五日内清偿债务，或者向人民法院提出书面异议。

债务人在前款规定的期间不提出异议又不履行支付令的，债权人可以向人民法院申请执行。

**Article 227** Upon acceptance of an application by a People's Court, upon examination of the facts and evidence provided by the creditor, where the creditor-debtor relationship is clear and legitimate, an order of payment shall be issued to the debtor within 15 days from the date of acceptance of the application; where the application is not justified, the People's Court shall rule that the application be rejected. The debtor shall settle the debt or submit a written objection to the People's Court within 15 days from the date of receipt of the order of payment.

Where the debtor failed to submit an objection or perform the order of payment within the period stipulated in the preceding paragraph, the creditor may apply to the People's Court for enforcement.

**第二百二十八条** 人民法院收到债务人提出的书面异议后，经审查，异议成立的，应当裁定终结督促程序，支付令自行失效。

支付令失效的，转入诉讼程序，但申请支付令的一方当事人不同意提起诉讼的除外。

**Article 228** Upon receipt of the written objection from the debtor, the People's Court shall rule on termination of procedure of supervision and urge upon examination and conclusion that the objection is justified, and the order of payment shall become void automatically. Where an order of payment becomes void, the case shall enter into litigation procedure, except where one party to the application for order of payment disagrees with filing of lawsuit.

## 第十八章 公示催告程序

## Chapter 18 — Procedures of Public Invitation to Assert Claims

**第二百二十九条** 按照规定可以背书转让的票据持有人，因票据被盗、遗失或者灭失，可以向票据支付地的基层人民法院申请公示催告。依照法律规定可以申请公示催告的其他事项，适用本章规定。

申请人应当向人民法院递交申请书，写明票面金额、发票人、持票人、背书人等票据主要内容和申请的理由、事实。

**第二百三十条** 人民法院决定受理申请，应当同时通知支付人停止支付，并在三日内发出公告，催促利害关系人申报权利。公示催告的期间，由人民法院根据情况决定，但不得少于六十日。

**第二百三十一条** 支付人收到人民法院停止支付的通知，应当停止支付，至公示催告程序终结。

公示催告期间，转让票据权利的行为无效。

**第二百三十二条** 利害关系人

**Article 229** A holder of a note which can be endorsed or transferred pursuant to the provisions may apply to a primary People's Court at the place of payment of the note for public invitation to assert claims in the event that the note is stolen, lost or destroyed. The provisions of this Chapter shall apply to other matters for which an application for public invitation to assert claims may be made pursuant to the provisions of the law. The applicant shall submit a written application to a People's Court, stating the main contents of the note such as the par value, drawer, bearer, endorser, etc. and the reason and facts of the application.

**Article 230** A People's Court shall, upon decision on acceptance of an application, simultaneously notify the payor to stop payment, issue a public announcement within three days, and urge interested parties to declare their rights. The period of public invitation to assert claims shall be decided by a People's Court in accordance with the circumstances but shall not be less than 60 days.

**Article 231** Upon receipt of the notice on stopping payment from the People's Court, the payor shall stop payment, until the procedure of public invitation to assert claims is concluded. During the period of public invitation to assert claims, the transfer of rights pertaining to the note shall be invalid.

**Article 232** Interested parties shall declare to the People's Court during the period of public invitation to assert

应当在公示催告期间向人民法院申报。

人民法院收到利害关系人的申报后，应当裁定终结公示催告程序，并通知申请人和支付人。

申请人或者申报人可以向人民法院起诉。

**claims.** Upon receipt of declaration by the interested parties, the People's Court shall rule on termination of the procedure of public invitation to assert claims and notify the applicant and the payor.

The applicant or the declarant may file a lawsuit with a People's Court.

**第二百三十三条** 没有人申报的，人民法院应当根据申请人的申请，作出判决，宣告票据无效。判决应当公告，并通知支付人。自判决公告之日起，申请人有权向支付人请求支付。

**Article 233** Where there is no declarant, the People's Court shall make a judgment in accordance with the applicant's application to declare that the bill is invalid. The judgment shall be announced in a public announcement and the payor shall be notified. With effect from the date of public announcement of the judgment, the applicant shall have the right to request for payment by the payor.

**第二百三十四条** 利害关系人因正当理由不能在判决前向人民法院申报的，自知道或者应当知道判决公告之日起一年内，可以向作出判决的人民法院起诉。

**Article 234** Where an interested party is unable to declare to the People's Court before the judgment due to a proper reason, the interested party may file a lawsuit with the People's Court which makes the judgment within one year from the date on which the interested party is aware or should be aware of the date of public announcement of the judgment.

### 第三编 执行程序

### PART III ENFORCEMENT PROCEDURES

#### 第十九章 一般规定

#### Chapter 19 — General Provisions

**第二百三十五条** 发生法律效力

**Article 235** A civil judgment or ruling which has come into legal effect and the property portion of a criminal judgment or

力的民事判决、裁定，以及刑事判决、裁定中的财产部分，由第一审人民法院或者与第一审人民法院同级的被执行的财产所在地人民法院执行。

法律规定由人民法院执行的其他法律文书，由被执行人住所地或者被执行的财产所在地人民法院执行。

**第二百三十六条** 当事人、利害关系人认为执行行为违反法律规定的，可以向负责执行的人民法院提出书面异议。当事人、利害关系人提出书面异议的，人民法院应当自收到书面异议之日起十五日内审查，理由成立的，裁定撤销或者改正；理由不成立的，裁定驳回。当事人、利害关系人对裁定不服的，可以自裁定送达之日起十日内向上一级人民法院申请复议。

**第二百三十七条** 人民法院自收到申请执行书之日起超过六个月未执行的，申请执行人可以向上一

**ruling shall be enforced by the People's Court of first instance or a People's Court at the location of the enforced property at the counterpart level of the People's Court of first instance.** Any other legal documents to be enforced by a People's Court pursuant to the provisions of the laws shall be enforced by a People's Court at the location of the enforcee's residence or the location of the enforced property.

**Article 236** Where a litigant or an interested party deemed that the act of enforcement is in violation of the provisions of the law, the litigant or interested party may submit a written objection to the People's Court which is in charge of enforcement. Where a litigant or an interested party submits a written objection, the People's Court shall conduct examination within 15 days from the date of receipt of the written objection, where the reason is valid, the People's Court shall rule on revocation or correction; where the reason is not valid, the People's Court shall rule that the application be rejected. Where the litigant or the interested party disagrees with the ruling, an application for review shall be submitted to the higher-level People's Court within 10 days from the date of service of the ruling.

**Article 237** Where a People's Court does not carry out enforcement within six months from the date of receipt of an application for enforcement, the applicant for enforcement may apply to a higher-level People's Court for enforcement. Upon examination by the higher-level People's Court, the

级人民法院申请执行。上一级人民法院经审查，可以责令原人民法院在一定期限内执行，也可以决定由本院执行或者指令其他人民法院执行。

**higher-level People's Court may order the original People's Court to carry out enforcement within a stipulated period, or the higher-level People's Court may decide to carry out enforcement or order another People's Court to carry out enforcement.**

**第二百三十八条** 执行过程中，案外人对执行标的提出书面异议的，人民法院应当自收到书面异议之日起十五日内审查，理由成立的，裁定中止对该标的的执行；理由不成立的，裁定驳回。案外人、当事人对裁定不服，认为原判决、裁定错误的，依照审判监督程序办理；与原判决、裁定无关的，可以自裁定送达之日起十五日内向人民法院提起诉讼。

**Article 238** During the enforcement process, where a non-party to the case submits a written objection in respect of the subject matter of enforcement, the People's Court shall conduct examination within 15 days from the date of receipt of the written objection, where the reason is valid, the People's Court shall rule on suspension of enforcement of the subject matter; where the reason is not valid, the People's Court shall rule that the application be rejected. Where the non-party to the case or the litigant disagrees with the ruling or deems that there is an error in the original judgment or ruling, the matter shall be dealt with pursuant to the procedure for trial supervision; whether it is unrelated to the original judgment or ruling, a lawsuit may be filed with a People's Court within 15 days from the date of service of the ruling.

**第二百三十九条** 执行工作由执行员进行。

**Article 239** Enforcement shall be carried out by enforcement officers. When adopting mandatory enforcement measures, an enforcement officer shall present his/her credential. Upon completion of enforcement, a written record of the status of enforcement shall be kept and the relevant personnel onsite shall sign or affix seal thereon.

采取强制执行措施时，执行员应当出示证件。执行完毕后，应当将执行情况制作笔录，由在场的有关人员签名或者盖章。

A People's Court may establish an enforcement agency based on the needs.

人民法院根据需要可以设立执



行机构。

**第二百四十条** 被执行人或者被执行的财产在外地的，可以委托当地人民法院代为执行。受委托人民法院收到委托函件后，必须在十五日内开始执行，不得拒绝。执行完毕后，应当将执行结果及时函复委托人民法院；在三十日内如果还未执行完毕，也应当将执行情况函告委托人民法院。

受委托人民法院自收到委托函件之日起十五日内不执行的，委托人民法院可以请求受委托人民法院的上级人民法院指令受委托人民法院执行。

**第二百四十一条** 在执行中，双方当事人自行和解达成协议的，执行员应当将协议内容记入笔录，由双方当事人签名或者盖章。

申请执行人因受欺诈、胁迫与被执行人达成和解协议，或者当事人不履行和解协议的，人民法院可以根据当事人的申请，恢复对原生

**Article 240** Where the enforcee or the enforced property is at another locality, a local People's Court may be entrusted to carry out enforcement on behalf. Upon receipt of the entrustment letter, the entrusted People's Court shall commence enforcement within 15 days and shall not refuse. Upon completion of enforcement, the entrusting People's Court shall be promptly notified of the enforcement outcome in writing; where the enforcement is not completed within 30 days, the entrusting People's Court shall also be notified of the status of enforcement in writing. Where the entrusted People's Court does not carry out enforcement within 15 days from the date of receipt of the entrustment letter, the entrusting People's Court may request the higher-level People's Court of the entrusted People's Court to order the entrusted People's Court to carry out enforcement.

**Article 241** During the enforcement process, where both parties concerned settle and reach an agreement, the enforcement officer shall include the contents of the agreement in the written record, both parties concerned shall sign and affix seal thereon. Where the applicant for enforcement is deceived or coerced into entering into a settlement agreement with the enforcee, or the litigants do not perform the settlement agreement, the People's Court may, pursuant to the application of a litigant, resume enforcement of the original legal document which has taken effect. Article 24 2 During the enforcement process, where the enforcee provides guarantee to the People's Court, and upon consent of the applicant for enforcement, the People's Court

效法律文书的执行。

第二百四十二条在执行中，被执行人向人民法院提供担保，并经申请执行人同意的，人民法院可以决定暂缓执行及暂缓执行的期限。被执行人逾期仍不履行的，人民法院有权执行被执行人的担保财产或者担保人的财产。

may decide on deferment of enforcement and the period for deferment of enforcement. Where the enforcer does not perform within the stipulated period, the People's Court shall have the right to enforce the enforcer's secured property or the guarantor's property.

**第二百四十三条** 作为被执行人的公民死亡的，以其遗产偿还债务。作为被执行人的法人或者其他组织终止的，由其权利义务承受人履行义务。

**Article 243** Where the enforcer who is a citizen has passed away, his/her estate shall be used to repay the debt. Where the enforcer who is a legal person or an organisation is terminated, the bearer of its rights and obligations shall perform the obligations.

**第二百四十四条** 执行完毕后，据以执行的判决、裁定和其他法律文书确有错误，被人民法院撤销的，对已被执行的财产，人民法院应当作出裁定，责令取得财产的人返还；拒不返还的，强制执行。

**Article 244** Upon completion of enforcement, where the judgment or ruling or any other legal document on which enforcement is based has an error and is revoked by the People's Court, the People's Court shall make a ruling on the enforced property and order the party which obtains the property to return the property; where the party refuses to return the property, mandatory enforcement shall be carried out.

**第二百四十五条** 人民法院制作的调解书的执行，适用本编的规定。

**Article 245** The provisions of this Part shall apply to enforcement of mediation documents prepared by People's Courts.

**第二百四十六条** 人民检察院

有权对民事执行活动实行法律监督。

**Article 246 People's Procuratorates shall have the right to implement legal supervision for civil enforcement.**

**第二十章 执行的申请和移送****Chapter 20 — Application for and Transfer of Enforcement****第二百四十七条** 发生法律效力

的民事判决、裁定，当事人必须履行。一方拒绝履行的，对方当事人可以向人民法院申请执行，也可以由审判员移送执行员执行。

**Article 247 The parties concerned shall perform the civil judgment or ruling which has come into legal effect. Where one party refuses to perform, the counterparty may apply to the People's Court for enforcement, or the judge may assign an enforcement officer to carry out enforcement.** With respect to a mediation document and any other legal document which should be enforced by the People's Court, the parties concerned shall perform the mediation document and legal document. Where one party refuses to perform, the counterparty may apply to the People's Court for enforcement.

## 调解书和其他应当由人民法院

执行的法律文书，当事人必须履行。一方拒绝履行的，对方当事人可以向人民法院申请执行。

**第二百四十八条** 对依法设立

的仲裁机构的裁决，一方当事人不履行的，对方当事人可以向有管辖权的人民法院申请执行。受申请的人民法院应当执行。

**Article 248 With respect to an arbitral award of an arbitration organisation established pursuant to the law, where one party does not perform, the counterparty may apply to a People's Court which has jurisdiction for enforcement. The People's Court accepting the application shall carry out enforcement.** Where the respondent presents evidence to prove that the arbitral award falls under any of the following circumstances, upon examination and verification by the collegiate bench formed by the People's Court, a ruling on non-enforcement shall be made:

被申请人提出证据证明仲裁裁决有下列情形之一的，经人民法院组成合议庭审查核实，裁定不予执行：

(1) The parties concerned have not included an arbitration clause in the contract or have not entered into a written arbitration agreement subsequently;

（一）当事人在合同中没有订有仲裁条款或者事后没有达成书面仲裁协议的；

（二）裁决的事项不属于仲裁协议的范围或者仲裁机构无权仲裁的；

（三）仲裁庭的组成或者仲裁的程序违反法定程序的；

（四）裁决所根据的证据是伪造的；

（五）对方当事人向仲裁机构隐瞒了足以影响公正裁决的证据的；

（六）仲裁员在仲裁该案时有贪污受贿，徇私舞弊，枉法裁决行为的。

人民法院认定执行该裁决违背社会公共利益的，裁定不予执行。

裁定书应当送达双方当事人和仲裁机构。

(2) The arbitration matter does not fall under the scope of the arbitration agreement or the arbitration organisation has no right to carry out arbitration;

(3) The composition of the arbitral tribunal or the arbitration procedures is/are in violation of statutory procedures;

(4) The evidence on which the arbitral award is based is forged;

(5) The counterparty has concealed evidence which has an impact on making a fair arbitral award from the arbitration organisation; or

(6) The arbitrators have committed bribery or favouritism or perverted the law in making the arbitral award when carrying out arbitration of the case.

Where the People's Court rules that enforcement of the arbitral award is against the public interest, a ruling of non-enforcement shall be made.

A ruling document shall be served on both parties to the arbitration and the arbitration organisation.

Where non-enforcement of an arbitral award is ruled by a People's Court, the party concerned may apply for arbitration again based on the written arbitration agreement between both parties, or file a lawsuit with a People's Court.

仲裁裁决被人民法院裁定不予执行的，当事人可以根据双方达成的书面仲裁协议重新申请仲裁，也可以向人民法院起诉。

**第二百四十九条** 对公证机关依法赋予强制执行效力的债权文书，一方当事人不履行的，对方当事人可以向有管辖权的人民法院申请执行，受申请的人民法院应当执行。

公证债权文书确有错误的，人民法院裁定不予执行，并将裁定书送达双方当事人和公证机关。

**第二百五十条** 申请执行的期间为二年。申请执行时效的中止、中断，适用法律有关诉讼时效中止、中断的规定。

前款规定的期间，从法律文书规定履行期间的最后一日起计算；法律文书规定分期履行的，从最后一期履行期限届满之日起计算；法律文书未规定履行期间的，从法律文书生效之日起计算。

**Article 249** Where one party concerned does not perform a debt instrument which has been vested with mandatory enforceability by a notary organisation pursuant to the law, the counterparty may apply to a People's Court which has jurisdiction for enforcement, the People's Court which accepts the application shall carry out enforcement. Where there is an error in the notarised debt instrument, the People's Court shall rule on non-enforcement, and shall serve the ruling document on both parties concerned and the notary organisation.

**Article 250** The time frame for application for enforcement shall be two years. The provisions of the applicable laws on suspension and termination of limitation of action shall apply to suspension and termination of limitation period for application for enforcement. The period stipulated in the preceding paragraph shall commence from the last day of the performance period stipulated in the legal document; where the legal document stipulates performance in phases, the period shall commence from the date of expiration of the time limit for the last performance; where the legal document does not stipulate the performance period, the period shall commence from the effective date of the legal document.

**第二百五十一条** 执行员接到申请执行书或者移交执行书，应当向被执行人发出执行通知，并可以立即采取强制执行措施。

## 第二十一章 执行措施

**第二百五十二条** 被执行人未按执行通知履行法律文书确定的义务，应当报告当前以及收到执行通知之日前一年的财产情况。被执行人拒绝报告或者虚假报告的，人民法院可以根据情节轻重对被执行人或者其法定代理人、有关单位的主要负责人或者直接责任人员予以罚款、拘留。

**第二百五十三条** 被执行人未按执行通知履行法律文书确定的义务，人民法院有权向有关单位查询被执行人的存款、债券、股票、基金份额等财产情况。人民法院有权根据不同情形扣押、冻结、划拨、变价被执行人的财产。人民法院查询、扣押、冻结、划拨、变价的财产不得超出被执行人应当履行义务

**Article 251** Upon receipt of an application for enforcement or a notice of handover of enforcement, the enforcement officer shall issue a notice of enforcement to the enforcee and may forthwith adopt mandatory enforcement measures.

## Chapter 21 — Enforcement Measures

**Article 252** Where an enforcee has not performed the obligations determined in the legal document pursuant to the notice of enforcement, the enforcee shall report the current status of property and the status of property in the year preceding the date of receipt of the notice of enforcement. Where the enforcee refuses to report or makes a false report, the People's Court may impose a fine or detention on the enforcee or its legal representative or the key person-in-charge or directly accountable personnel of the relevant organisation based on the extent of the circumstances.

**Article 253** Where an enforcee does not perform the obligations determined in the legal document pursuant to the notice of enforcement, the People's Court shall have the right to enquire about the enforcee's properties such as deposits, debentures, shares, unit trusts, etc from the relevant organisations. The People's Court shall have the right to seize, freeze, appropriate or sell the enforcee's properties based on the circumstances. The properties enquired, seized, frozen, appropriated or sold by the People's Court shall not exceed the scope of performance of obligations of the enforcee. Where the People's Court decides on seizure, freezing, appropriation or sale of properties, the People's Court shall make a ruling and issue a "Notice on Assistance for Enforcement", the relevant organisations shall act accordingly.

的范围。

人民法院决定扣押、冻结、划拨、变价财产，应当作出裁定，并发出协助执行通知书，有关单位必须办理。

**第二百五十四条** 被执行人未按执行通知履行法律文书确定的义务，人民法院有权扣留、提取被执行人应当履行义务部分的收入。但应当保留被执行人及其所扶养家属的生活必需费用。

人民法院扣留、提取收入时，应当作出裁定，并发出协助执行通知书，被执行人所在单位、银行、信用合作社和其他有储蓄业务的单位必须办理。

**第二百五十五条** 被执行人未按执行通知履行法律文书确定的义务，人民法院有权查封、扣押、冻结、拍卖、变卖被执行人应当履行义务部分的财产。但应当保留被执行人及其所扶养家属的生活必需

**Article 254** Where an enforcee does not perform the obligations determined in the legal document pursuant to the notice of enforcement, the People's Court shall have the right to withhold or withdraw the portion of the enforcee's income which corresponds to the performance of obligations, but shall retain the requisite living expenses of the enforcee and his/her dependants. A People's Court shall make a ruling at the time of withholding or withdrawal of income, and issue a "Notice on Assistance for Enforcement", the enforcee's employer, the bank(s), the credit cooperative(s) and other organisations with savings business shall act accordingly.

**Article 255** Where an enforcee does not perform the obligations determined in the legal document pursuant to the notice of enforcement, the People's Court shall have the right to seize, confiscate, freeze, auction or sell the enforcee's properties which correspond to the performance of obligations, but shall retain the necessities of the enforcee and his/her dependants. For adoption of the measures in the preceding paragraph, a People's Court shall make a ruling.



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采取前款措施，人民法院应当作出裁定。

**第二百五十六条** 人民法院查封、扣押财产时，被执行人是公民的，应当通知被执行人或者他的成年家属到场；被执行人是法人或者其他组织的，应当通知其法定代表人或者主要负责人到场。拒不到场的，不影响执行。被执行人是公民的，其工作单位或者财产所在地的基层组织应当派人参加。

对被查封、扣押的财产，执行员必须造具清单，由在场人签名或者盖章后，交被执行人一份。被执行人是公民的，也可以交他的成年家属一份。

**第二百五十七条** 被查封的财产，执行员可以指定被执行人负责保管。因被执行人的过错造成的损失，由被执行人承担。

**第二百五十八条** 财产被查

**Article 256** When a People's Court seizes or confiscates properties, where the enforcee is a citizen, the People's Court shall notify the enforcee or his/her adult family members to be present; where the enforcee is a legal person or an organisation, the People's Court shall notify the legal representative of the legal person or the key person-in-charge of the organisation to be present. Absence of the said person(s) shall not affect enforcement. Where the enforcee is a citizen, his/her employer or the grassroots organisation at the location of the properties shall assign personnel to participate in the enforcement. The enforcement officer shall prepare a list of the seized and confiscated properties, the persons on-site shall sign or affix seal thereon, and a copy shall be given to the enforcee. Where the enforcee is a citizen, a copy may be given to his/her adult family member.

**Article 257** The enforcement officer may appoint the enforcee to be responsible for safekeeping the seized properties, the enforcee shall bear the losses resulting from his/her mistake.

**Article 258** Upon seizure and confiscation of properties, the enforcement officer shall order the enforcee to perform the

封、扣押后，执行员应当责令被执  
行人在指定期间履行法律文书确定  
的义务。被执行人逾期不履行的，  
人民法院应当拍卖被查封、扣押的  
财产；不适于拍卖或者当事人双方  
同意不进行拍卖的，人民法院可以  
委托有关单位变卖或者自行变卖。  
国家禁止自由买卖的物品，交有关  
单位按照国家规定的价格收购。

**第二百五十九条** 被执行人不

履行法律文书确定的义务，并隐匿  
财产的，人民法院有权发出搜查  
令，对被执行人及其住所或者财产  
隐匿地进行搜索。

采取前款措施，由院长签发搜  
查令。

**第二百六十条** 法律文书指定

交付的财物或者票证，由执行员传  
唤双方当事人当面交付，或者由执  
行员转交，并由被交付人签收。

有关单位持有该项财物或者票  
证的，应当根据人民法院的协助执  
行通知书转交，并由被交付人签

**obligations determined in the legal documents within the designated period. Where the enforcee refuses to perform the obligations within the stipulated period, the People's Court shall auction or sell the seized and confiscated properties; where the properties are not suitable to be put up for auction or both parties concerned agree not to put the properties up for auction, the People's Court may entrust the relevant organisations to sell the properties or the People's Court may arrange to sell the properties. Items prohibited by the State to be traded freely shall be handed to the relevant organisations for acquisition in accordance with the prices stipulated by the State.**

**Article 259** Where an enforcee does not perform the obligations determined in the legal document, and conceals the properties, the People's Court shall have the right to issue a search warrant, and conduct search on the enforcee and his/her residence or the place where the properties are concealed. For adoption of the measures in the preceding paragraph, the president of the court shall issue a search warrant.

**Article 260** For properties or bills to be delivered as designated by a legal document, the enforcement officer shall summon both parties concerned for face-to-face delivery or forwarded by the enforcement officer and the party taking delivery shall acknowledge receipt. Where the properties or bills are held by the relevant organisations, the properties or bills shall be handed over pursuant to the "Notice on Assistance for Enforcement" of the People's Court, and the party taking delivery shall acknowledge receipt. Where the properties or bills are held by the relevant citizen, the People's Court shall notify the citizen to hand over. Where the relevant

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citizen refuses to hand over, mandatory enforcement shall be carried out.

有关公民持有该项财物或者票证的，人民法院通知其交出。拒不交出的，强制执行。

**第二百六十一条** 强制迁出房屋或者强制退出土地，由院长签发公告，责令被执行人在指定期间履行。被执行人逾期不履行的，由执行员强制执行。

强制执行时，被执行人是公民的，应当通知被执行人或者他的成年家属到场；被执行人是法人或者其他组织的，应当通知其法定代表人或者主要负责人到场。拒不到场的，不影响执行。被执行人是公民的，其工作单位或者房屋、土地所在地的基层组织应当派人参加。执行员应当将强制执行情况记入笔录，由在场人签名或者盖章。

强制迁出房屋被搬出的财物，由人民法院派人运至指定处所，交给被执行人。被执行人是公民的，也可以交给他的成年家属。因拒绝

**Article 261** For mandatory eviction from a building or mandatory eviction from a land parcel, the president of the court shall issue a public announcement to order the enforcee to perform eviction during the stipulated period. Where the enforcee failed to perform eviction during the stipulated period, the enforcement officer shall carry out mandatory enforcement. During mandatory enforcement, if the enforcee is a citizen, the enforcee or his/her adult family member shall be notified to be present; where the enforcee is a legal person or an organisation, its legal representative or the key person-in-charge shall be notified to be present. Absence of the notified person shall not affect enforcement. If the enforcee is a citizen, his/her employer or the grassroots organisation at the location of the housing or land parcel shall assign personnel to participate in enforcement. The enforcement officer shall prepare written record of the status of mandatory enforcement, the persons on-site shall sign or affix seal thereon.

Properties removed from a mandatory eviction building shall be transported to designated premises by the personnel assigned by the People's Court and handed over to the enforcee. Where the enforcee is a citizen, the properties may be handed over to his/her adult family member(s). Losses arising from refused acceptance shall be borne by the enforcee.

接收而造成的损失，由被执行人承担。

**第二百六十二条** 在执行中，需要办理有关财产权证照转移手续的，人民法院可以向有关单位发出协助执行通知书，有关单位必须办理。

**第二百六十三条** 对判决、裁定和其他法律文书指定的行为，被执行人未按执行通知履行的，人民法院可以强制执行或者委托有关单位或者其他人员完成，费用由被执行人承担。

**第二百六十四条** 被执行人未按判决、裁定和其他法律文书指定的期间履行给付金钱义务的，应当加倍支付迟延履行期间的债务利息。被执行人未按判决、裁定和其他法律文书指定的期间履行其他义务的，应当支付迟延履行金。

**第二百六十五条** 人民法院采取本法第二百五十三条、第二百五十四条、第二百五十五条规定的执

**Article 262** During the enforcement process, where there is a need to complete the formalities for transfer of the relevant property rights certificate, the People's Court may issue a "Notice on Assistance for Enforcement" to the relevant organisation(s), the relevant organisation(s) shall act accordingly.

**Article 263** Where an enforcee does not perform the acts stipulated by a judgment, ruling or any other legal document pursuant to the notice of enforcement, the People's Court may carry out mandatory enforcement or entrust the relevant organisation or any other person to carry out enforcement, and the enforcee shall bear the expenses.

**Article 264** Where an enforcee does not perform the obligations for money payment within the period stipulated in a judgment, ruling or any other legal document, the enforcee shall pay an amount double the interest on the debts during the deferred performance period. Where an enforcee does not perform other obligations during the period stipulated in the judgment, ruling or any other legal document, the enforcee shall pay a deferred performance fine.

**Article 265** Upon adoption of enforcement measures stipulated in Article 253, Article 254 or Article 255 hereof by a People's Court, where an enforcee is still unable to repay the debts, the obligations shall continue to be performed. Where a

行措施后，被执行人仍不能偿还债务的，应当继续履行义务。债权人发现被执行人有其他财产的，可以随时请求人民法院执行。

**creditor becomes aware that the enforcee has other properties, the creditor may request to a People's court at any time for enforcement.**

**第二百六十六条** 被执行人不履行法律文书确定的义务的，人民法院可以对其采取或者通知有关单位协助采取限制出境，在征信系统记录、通过媒体公布不履行义务信息以及法律规定的其他措施。

**Article 266** Where an enforcee does not perform the obligations determined in the legal document, the People's Court may adopt or notify the relevant authorities to assist in adoption of measures such as restricting the enforcee from leaving China, announcement of information on non-performance of obligations through the creditworthiness system records or the media and other measures stipulated by the laws.

## **第二十二章 执行中止和终结**

## **Chapter 22 — Suspension and Termination of Enforcement**

**第二百六十七条** 有下列情形之一的，人民法院应当裁定中止执行：

**Article 267** Under any of the following circumstances, the People's Court shall rule that enforcement be suspended: (1) The applicant has indicated that the enforcement can be deferred;

（一）申请人表示可以延期执行的；

(2) A non-party to the case raised an objection to the subject matter of enforcement and the objection is justified;

（二）案外人对执行标的提出确有理由的异议的；

(3) A citizen who is a party has passed away, and there is a need to wait for his/her heir to succeed his/her rights or bear his/her obligations;

（三）作为一方当事人的公民死亡，需要等待继承人继承权利或者承担义务的；

(4) A legal person or an organisation who is a party has its operation terminated and the bearer of its rights and obligations has not been determined; or

(5) Any other circumstances under which a People's Court deemed that enforcement should be suspended.

Upon elimination of the circumstances for suspension, enforcement shall resume.

（四）作为一方当事人的法人或者其他组织终止，尚未确定权利义务承受人的；

（五）人民法院认为应当中止执行的其他情形。

中止的情形消失后，恢复执行。

**第二百六十八条** 有下列情形之一的，人民法院裁定终结执行：

- （一）申请人撤销申请的；
- （二）据以执行的法律文书被撤销的；
- （三）作为被执行人的公民死亡，无遗产可供执行，又无义务承担人的；
- （四）追索赡养费、扶养费、抚养费案件的权利人死亡的；
- （五）作为被执行人的公民因生活困难无力偿还借款，无收入来源，又丧失劳动能力的；

**Article 268 Under any of the following circumstances, the People's Court shall rule that enforcement be terminated: (1)**

The applicant has revoked the application;

(2) The legal documents on which the enforcement is based are revoked;

(3) A citizen who is an enforcee has passed away and does not have estate which can be enforced upon, and there is no duty bearer;

(4) The rights holder in a case for recourse of alimony, payment of maintenance, payment of upbringing has passed away;

(5) A citizen who is an enforcee has financial difficulties and is unable to repay borrowings, has no source of income and loses the ability to work; or

(6) Any other circumstances under which a People's Court deemed that enforcement should be terminated.

（六）人民法院认为应当终结执行的其他情形。

**第二百六十九条** 中止和终结执行的裁定，送达当事人后立即生效。

**第四编 涉外民事诉讼程序的特别规定**

**第二十三章 一般原则**

**第二百七十条** 在中华人民共和国领域内进行涉外民事诉讼，适用本编规定。本编没有规定的，适用本法其他有关规定。

**第二百七十一条** 中华人民共和国缔结或者参加的国际条约同本法有不同规定的，适用该国际条约的规定，但中华人民共和国声明保留的条款除外。

**第二百七十二条** 对享有外交特权与豁免的外国人、外国组织或者国际组织提起的民事诉讼，应当依照中华人民共和国有关法律和中华人民共和国缔结或者参加的国际

**Article 269** A ruling on suspension or termination of enforcement shall take effect upon service on the party concerned.

#### **PART IV — SPECIAL PROVISIONS ON FOREIGN-RELATED CIVIL PROCEDURES**

#### **Chapter 23 — General Principles**

**Article 270** The provisions of this Part shall apply to foreign-related civil lawsuits carried out in the People's Republic of China. Where this Part does not stipulate, other relevant provisions hereof shall apply.

**Article 271** Where the provisions of an international treaty concluded or participated by the People's Republic of China differ from the provisions hereof, the provisions of the international treaty shall apply, except for clauses for which the People's Republic of China declared reservation.

**Article 272** Civil lawsuits filed by foreigners, foreign organisations or international organisations that enjoy diplomatic privileges and immunities shall be handled pursuant to the provisions of the relevant laws of the People's Republic of China and the international treaties concluded or participated by the People's Republic of China.



条约的规定办理。

**第二百七十三条** 人民法院审理涉外民事案件，应当使用中华人民共和国通用的语言、文字。当事人要求提供翻译的，可以提供，费用由当事人承担。

**Article 273** People's Courts trying foreign-related civil lawsuits shall use language or text commonly used in the People's Republic of China. Where a litigant requests for provision of translation, translation may be provided and the expenses shall be borne by the litigant.

**第二百七十四条** 外国人、无国籍人、外国企业和组织在人民法院起诉、应诉，需要委托律师代理诉讼的，必须委托中华人民共和国的律师。

**Article 274** Foreigners, stateless persons, foreign enterprises and organisations filing a lawsuit or countersuit with a People's Court that are required to entrust a lawyer to participate in proceedings shall entrust a lawyer of the People's Republic of China.

**第二百七十五条** 在中华人民共和国领域内没有住所的外国人、无国籍人、外国企业和组织委托中华人民共和国律师或者其他代理人代理诉讼，从中华人民共和国领域外寄交或者托交的授权委托书，应当经所在国公证机关证明，并经中华人民共和国驻该国使领馆认证，或者履行中华人民共和国与该所在国订立的有关条约中规定的证明手续后，才具有效力。

**Article 275** Where a foreigner, stateless person or foreign enterprise or organisation without residence in the People's Republic of China entrusts a lawyer or any other person in the People's Republic of China to participate in proceedings or mails or entrusts submission of the power of attorney from regions outside the People's Republic of China, the power of attorney shall be effective upon notarisation by a notary organisation in that country and authentication by the embassy or consulate of the People's Republic of China in that country, or performance of authentication formalities stipulated in the relevant treaty concluded between the People's Republic of China and the country.

## 第二十四章 管辖

## Chapter 24 — Jurisdiction

**第二百七十六条** 因涉外民事纠纷，对在中华人民共和国领域内没有住所的被告提起除身份关系以外的诉讼，如果合同签订地、合同履行地、诉讼标的物所在地、可供扣押财产所在地、侵权行为地、代表机构住所地位于中华人民共和国领域内的，可以由合同签订地、合同履行地、诉讼标的物所在地、可供扣押财产所在地、侵权行为地、代表机构住所地人民法院管辖。

**Article 276** For a foreign-related civil dispute lawsuit other than the personal status relationship filed against a defendant who has no domicile within the territory of the People's Republic of China, the People's Court at the place of execution of contract, the place of performance of contract, the location of the subject matter of litigation, the location of the properties available for seizure, the place of infringement act or the domicile of the representative office may have jurisdiction, if the place of execution of contract, the place of performance of contract, the location of the subject matter of litigation, the location of the properties available for seizure, the place of infringement act or the domicile of the representative office is located within the territory of the People's Republic of China. Except as stipulated in the preceding paragraph, foreign-related civil disputes that are otherwise appropriately related to the People's Republic of China may fall under the jurisdiction of the people's court.

除前款规定外，涉外民事纠纷与中华人民共和国存在其他适当联系的，可以由人民法院管辖。

**第二百七十七条** 涉外民事纠纷的当事人书面协议选择人民法院管辖的，可以由人民法院管辖。

**Article 277** Where the parties to a foreign-related civil dispute agree in writing to select a people's court for jurisdiction, the People's Court may have jurisdiction.

**第二百七十八条** 当事人未提出管辖异议，并应诉答辩或者提出反诉的，视为人民法院有管辖权。

**Article 278** Where the parties do not raise any objection to jurisdiction and respond to defend or file counterclaims, the people's court shall be deemed to have jurisdiction.

**第二百七十九条** 下列民事案件，由人民法院专属管辖：

**Article 279** A people's court shall have exclusive jurisdiction over the following civil cases: (1) actions initiated due to disputes over the establishment, dissolution and liquidation of a legal person or any other organization established within the

（一）因在中华人民共和国领域内设立的法人或者其他组织的设立、解散、清算，以及该法人或者其他组织作出的决议的效力等纠纷提起的诉讼；

（二）因与在中华人民共和国领域内审查授予的知识产权的有效性有关的纠纷提起的诉讼；

（三）因在中华人民共和国领域内履行中外合资经营企业合作合同、中外合作经营企业合作合同、中外合作勘探开发自然资源合同发生纠纷提起的诉讼。

territory of the People's Republic of China, as well as the validity of a resolution passed by the said legal person or other organization;

(2) actions initiated due to disputes relating to examination of the validity of intellectual property rights granted within the territory of the People's Republic of China; and

(3) actions initiated due to disputes arising from performance of Sino-foreign equity joint venture contracts, Sino-foreign cooperative joint venture contracts and Sino-foreign cooperative exploration and development of natural resources contracts within the territory of the People's Republic of China.

**第二百八十条** 当事人之间的同一纠纷，一方当事人向外国法院起诉，另一方当事人向人民法院起诉，或者一方当事人既向外国法院起诉，又向人民法院起诉，人民法院依照本法有管辖权的，可以受理。当事人订立排他性管辖协议选择外国法院管辖且不违反本法对专属管辖的规定，不涉及中华人民共和国主权、安全或者社会公共利益

**Article 280** Where a party to the same dispute between the parties concerned files a lawsuit with a foreign court and the other party files a lawsuit with a people's court, or a party files a lawsuit with both a foreign court and a people's court, the people's court which has jurisdiction pursuant to this Law may accept the dispute. Where the parties enter into an exclusive jurisdiction agreement and select a foreign court for jurisdiction, which does not violate the provisions of this Law on exclusive jurisdiction and does not involve the sovereignty, security or public interest of the People's Republic of China, the people's court may rule on non-acceptance of the dispute; where the case has been accepted, the people's court shall rule to dismiss the lawsuit.

的，人民法院可以裁定不予受理；

已经受理的，裁定驳回起诉。

**第二百八十一条** 人民法院依据前条规定受理案件后，当事人以外国法院已经先于人民法院受理为由，书面申请人民法院中止诉讼的，人民法院可以裁定中止诉讼，但是存在下列情形之一的除外：

（一）当事人协议选择人民法院管辖，或者纠纷属于人民法院专属管辖；

（二）由人民法院审理明显更为方便。

外国法院未采取必要措施审理案件，或者未在合理期限内审结的，依当事人的书面申请，人民法院应当恢复诉讼。

外国法院作出的发生法律效力  
的判决、裁定，已经被人民法院全部或者部分承认，当事人对已经获得承认的部分又向人民法院起诉的，裁定不予受理；已经受理的，

**Article 281** Upon acceptance of a case by a people's court pursuant to the provisions of the preceding Article, where a litigant applies to the people's court in writing for suspension of the lawsuit, on the ground that the foreign court has accepted the case prior to the people's court, the people's court may rule on suspension of the lawsuit, except under any of the following circumstances: (1) the litigants have agreed on selection of a people's court with jurisdiction, or the dispute falls under exclusive jurisdiction of the people's court; or

(2) it is evidently more convenient for a people's court to try the case.

Where the foreign court does not adopt the requisite measures to try the case or does not conclude the case within a reasonable period, the people's court shall resume litigation upon a written application by a litigant.

Where all or part of a judgment or ruling made by a foreign court which has come into legal effect is recognised by the people's court, and a litigant files a lawsuit with the people's court again in respect of the recognised part, the people's court shall rule on non-acceptance of case; where the case has been accepted, the people's court shall rule to dismiss the lawsuit.

裁定驳回起诉。

**第二百八十二条** 人民法院受理的涉外民事案件，被告提出管辖异议，且同时有下列情形的，可以裁定驳回起诉，告知原告向更为方便的外国法院提起诉讼：

（一）案件争议的基本事实不是发生在中华人民共和国领域内，人民法院审理案件和当事人参加诉讼均明显不方便；

（二）当事人之间不存在选择人民法院管辖的协议；

（三）案件不属于人民法院专属管辖；

（四）案件不涉及中华人民共和国主权、安全或者社会公共利益；

（五）外国法院审理案件更为方便。

裁定驳回起诉后，外国法院对纠纷拒绝行使管辖权，或者未采取

**Article 282** For a foreign-related civil case accepted by a people's court, where the defendant raises a jurisdictional objection, and the following circumstances are satisfied concurrently, the people's court may rule on rejection of the lawsuit and notify the plaintiff to file a lawsuit with a foreign court which is more convenient: (1) the basic facts of the dispute involved in the case have not occurred in the People's Republic of China, and it is evidently inconvenient for the people's court to try the case and for the litigants to participate in the lawsuit;

(2) the litigants have not agreed on selection of the people's court for jurisdiction;

(3) the case does not fall under exclusive jurisdiction of the people's court;

(4) the case does not involve the sovereignty, security or public interest of the People's Republic of China; and

(5) it is more convenient for a foreign court to try the case.

Upon ruling on rejection of the lawsuit, where the foreign court refuses to exercise jurisdiction over the dispute or does not adopt the requisite measures to try the case or does not conclude the case within a reasonable period, and a litigant files a lawsuit with the people's court again, the people's court shall accept the case.

必要措施审理案件，或者未在合理期限内审结，当事人又向人民法院起诉的，人民法院应当受理。

## 第二十五章 送达、调查取证、期间

## Chapter 25 — Service, Investigation and Evidence Collection and Period

**第二百八十三条** 人民法院对在中华人民共和国领域内没有住所的当事人送达诉讼文书，可以采用下列方式：

**Article 283** A people's court may adopt the following methods for service of litigation documents on litigants without domicile in the People's Republic of China: (1) service by the methods stipulated in an international treaty concluded or jointly acceded to by the country of the party being served and the People's Republic of China;

（一）依照受送达人所在国与中华人民共和国缔结或者共同参加的国际条约中规定的方式送达；

(2) service through diplomatic channels;

（二）通过外交途径送达；

(3) service upon the party being served with the Chinese nationality by the entrusted embassy or consulate of the People's Republic of China based in the country where the party being served resides;

（三）对具有中华人民共和国国籍的受送达人，可以委托中华人民共和国驻受送达人所在国的使领馆代为送达；

(4) service on the agent ad litem entrusted by the party being served in the lawsuit;

（四）向受送达人在本案中委托的诉讼代理人送达；

(5) service on a wholly owned enterprise, representative office or branch established in the People's Republic of China by the party being served or a business agent who has the right to receive service of process;

（五）向受送达人在中华人民共和国领域内设立的独资企业、代

(6) service on the legal person or other organisation where the party being served is a foreigner or a Stateless person, who acts as the legal representative or key person-in-charge of a legal person or any other organisation established in the People's Republic of China, and is the co-defendant with the said legal person or other organisation;

(7) service on the legal representative or key person-in-charge

表机构、分支机构或者有权接受送达的业务代办人送达；

where the party being served is a foreign legal person or any other organisation, and its legal representative or key person-in-charge is in the People's Republic of China;

（六）受送达人为外国人、无国籍人，其在中华人民共和国领域内设立的法人或者其他组织担任法定代表人或者主要负责人，且与该法人或者其他组织为共同被告的，向该法人或者其他组织送达；

(8) where the laws of the country where the party being served resides permit service of documents by mail, the documents may be served by mail; upon expiry of a three-month period from the date of mailing and the acknowledgement of service is not being returned, but the documents may be deemed served based on the circumstances, the service shall be deemed successful on the date of expiry of the period;

（七）受送达人为外国法人或者其他组织，其法定代表人或者主要负责人在中华人民共和国领域内的，向其法定代表人或者主要负责人送达；

(9) service by electronic methods for which receipt by the party being served can be confirmed, except prohibited by the laws of the country where the party being served resides; and

（八）受送达人所在国的法律允许邮寄送达的，可以邮寄送达，自邮寄之日起满三个月，送达回证没有退回，但根据各种情况足以认定已经送达的，期间届满之日视为送达；

(10) service by any other methods agreed by the party being served, except prohibited by the laws of the country where the party being served resides.

Where the documents cannot be served by any of the aforesaid methods, the documents shall be served by way of a public announcement and deemed served 60 days after the date of issuance of the public announcement.

（九）采用能够确认受送达人收悉的电子方式送达，但是受送达人所在国法律禁止的除外；



（十）以受送达人同意的其他方式送达，但是受送达人所在国法律禁止的除外。

不能用上述方式送达的，公告送达，自发出公告之日起，经过六十日，即视为送达。

**第二百八十四条** 当事人申请人民法院调查收集的证据位于中华人民共和国领域外，人民法院可以依照证据所在国与中华人民共和国缔结或者共同参加的国际条约中规定的方式，或者通过外交途径调查收集。

在所在国法律不禁止的情况下，人民法院可以采用下列方式调查收集：

（一）对具有中华人民共和国国籍的当事人、证人，可以委托中华人民共和国驻当事人、证人所在国的使领馆代为取证；

（二）经双方当事人同意，通过即时通讯工具取证；

**Article 284** Where the evidence applied by a litigant to a people's court for investigation and collection is located outside the People's Republic of China, the people's court may investigate and collect evidence pursuant to the methods stipulated in the international treaties concluded or jointly acceded to by the country where the evidence is located and the People's Republic of China or through diplomatic channels. Where the laws of the country where the evidence is located do not prohibit, the people's court may adopt the following methods to investigate and collect evidence:

(1) where a litigant or witness is of PRC nationality, the people's court may entrust the embassy or consulate of the People's Republic of China based in the country of the litigant or witness to collect evidence on its behalf;

(2) upon consent of both parties to the case, it may collect evidence through instant messaging tools; and

(3) it may collect evidence by any other method agreed by both parties to the case.

（三）以双方当事人同意的其他方式取证。

**第二百八十五条** 被告在中华人民共和国领域内没有住所的，人民法院应当将起诉状副本送达被告，并通知被告在收到起诉状副本后三十日内提出答辩状。被告申请延期的，是否准许，由人民法院决定。

**第二百八十六条** 在中华人民共和国领域内没有住所的当事人，不服第一审人民法院判决、裁定的，有权在判决书、裁定书送达之日起三十日内提起上诉。被上诉人在收到上诉状副本后，应当在三十日内提出答辩状。当事人不能在法定期间提起上诉或者提出答辩状，申请延期的，是否准许，由人民法院决定。

**第二百八十七条** 人民法院审理涉外民事案件的期间，不受本法第一百五十二条、第一百八十三条规定的限制。

**Article 285** With respect to a Defendant without a domicile in the People's Republic of China, the People's Court shall serve the duplicate copy of the indictment on the Defendant, and notify the Defendant to submit a pleading within 30 days from receipt of the duplicate copy of the indictment. Where the Defendant applies for an extension of time, the People's Court shall decide whether to grant an extension of time.

**Article 286** Where a litigant without residence in the People's Republic of China disagrees with the judgment or ruling of the People's Court of first instance, the litigant shall have the right to file an appeal within 30 days from the date of service of the written judgment or ruling document. Upon receipt of the duplicate copy of the petition for appeal, the appellee shall submit a pleading within 30 days. Where the litigant is unable to file an appeal or submit a pleading within the statutory period and applies for an extension of time, the People's Court shall decide whether to grant an extension of time.

**Article 287** The period for trial of foreign-related civil cases by People's Courts shall not be subject to the provisions stipulated in Article 152 and Article 183 hereof.

## 第二十六章 仲 裁

## Chapter 26 — Arbitration

**第二百八十八条** 涉外经济贸易、运输和海事中发生的纠纷，当事人在合同中订有仲裁条款或者事后达成书面仲裁协议，提交中华人民共和国涉外仲裁机构或者其他仲裁机构仲裁的，当事人不得向人民法院起诉。

**Article 288** With respect to disputes arising in foreign economic relations and trade and foreign-related transport and maritime activities, where the parties concerned have included an arbitration clause in the contract or a written arbitration agreement is reached subsequently for submission of the dispute to a foreign-related arbitration organisation of the People's Republic of China or any other arbitration organisation for arbitration, the parties concerned shall not file a lawsuit with a People's Court. Where the parties concerned have not included an arbitration clause in the contract or no written arbitration agreement is reached subsequently, they may file a lawsuit with a People's Court.

当事人在合同中没有订有仲裁条款或者事后没有达成书面仲裁协议的，可以向人民法院起诉。

**第二百八十九条** 当事人申请采取保全的，中华人民共和国的涉外仲裁机构应当将当事人的申请，提交被申请人住所地或者财产所在地的中级人民法院裁定。

**Article 289** Where a party concerned applies for preservation, the foreign-related arbitration organisation of the People's Republic of China shall forward the application of the party concerned to an intermediate People's Court at the location of the respondent's residence or the location of the properties for ruling.

**第二百九十条** 经中华人民共和国涉外仲裁机构裁决的，当事人不得向人民法院起诉。一方当事人不履行仲裁裁决的，对方当事人可以向被申请人住所地或者财产所在地的中级人民法院申请执行。

**Article 290** Upon ruling by a foreign-related arbitration organisation of the People's Republic of China, the parties concerned shall not file a lawsuit with a People's Court. Where a party concerned does not perform the arbitral award, the counterparty may apply to an intermediate People's Court at the location of the respondent's residence or the location of the properties for enforcement.

**第二百九十一条** 对中华人民

共和国涉外仲裁机构作出的裁决，被申请人提出证据证明仲裁裁决有下列情形之一的，经人民法院组成合议庭审查核实，裁定不予执行：

（一）当事人在合同中没有订有仲裁条款或者事后没有达成书面仲裁协议的；

（二）被申请人没有得到指定仲裁员或者进行仲裁程序的通知，或者由于其他不属于被申请人负责的原因未能陈述意见的；

（三）仲裁庭的组成或者仲裁的程序与仲裁规则不符的；

（四）裁决的事项不属于仲裁协议的范围或者仲裁机构无权仲裁的。

人民法院认定执行该裁决违背社会公共利益的，裁定不予执行。

**第二百九十二条** 仲裁裁决被

人民法院裁定不予执行的，当事人可以根据双方达成的书面仲裁协议

**Article 291** For an arbitral award made by a foreign-related arbitration organisation of the People's Republic of China, where the respondent presents evidence to prove that the arbitral award falls under any of the following circumstances, upon examination and verification by the collegiate bench formed by the People's Court that the assertion is true, the People's Court shall rule on non-enforcement: (1) The parties concerned have not included an arbitration clause in the contract or reached a written arbitration agreement subsequently;

(2) The respondent has not received a notice from the designated arbitrators or notice on arbitration procedure, or the respondent is unable to make representation due to any reason not attributable to the respondent;

(3) The composition of the arbitral tribunal or the arbitration procedure does not comply with the arbitration rules; or

(4) The arbitration matter does not fall under the scope of the arbitration agreement or the arbitration organisation has no right to carry out arbitration.

Where a People's Court deemed that enforcement of the arbitral award violates public interest, the People's Court shall rule on non-enforcement.

**Article 292** Where a People's Court rules on non-enforcement of an arbitral award, the parties concerned may apply for arbitration again pursuant to the written arbitration agreement reached by both parties, or file a lawsuit with a People's

重新申请仲裁，也可以向人民法院  
起诉。

第二十七章 司法协助

第二百九十三条 根据中华人  
民共和国缔结或者参加的国际条  
约，或者按照互惠原则，人民法院  
和外国法院可以相互请求，代为送  
达文书、调查取证以及进行其他诉  
讼行为。

外国法院请求协助的事项有损  
于中华人民共和国的主权、安全或  
者社会公共利益的，人民法院不予  
执行。

第二百九十四条 请求和提供  
司法协助，应当依照中华人民共和  
国缔结或者参加的国际条约所规定  
的途径进行；没有条约关系的，通  
过外交途径进行。

外国驻中华人民共和国的使领  
馆可以向该国公民送达文书和调查  
取证，但不得违反中华人民共和国  
的法律，并不得采取强制措施。

Court.

Chapter 27 — Judicial Assistance

**Article 293 Pursuant to the international treaty concluded or participated by the People's Republic of China or in accordance with the principle of reciprocity, a People's Court and a foreign court may request each other to carry out service of documents on behalf, investigation and collection of evidence and any other litigation acts.** Where a request by a foreign court for assistance is prejudicial to the sovereignty, security or public interest of the People's Republic of China, the People's Court shall refuse to enforce.

**Article 294 Request for and provision of judicial assistance shall be carried out via the channels stipulated in the international treaty concluded or participated by the People's Republic of China; where there is no treaty relations, request for and provision of judicial assistance shall be carried out via diplomatic channels.** An embassy or consulate of a foreign country based in the People's Republic of China may serve documents on a citizen of the foreign country and carry out investigation and collection of evidence, but shall not violate the laws of the People's Republic of China and shall not adopt mandatory measures.

Except for the circumstances stipulated in the preceding paragraph, no foreign agency or individual shall carry out service of documents, investigation and collection of evidence in the

除前款规定的情况外，未经中华人民共和国主管机关准许，任何外国机关或者个人不得在中华人民共和国领域内送达文书、调查取证。

People's Republic of China without the consent by the relevant administrative authorities of the People's Republic of China.

**第二百九十五条** 外国法院请求人民法院提供司法协助的请求书及其所附文件，应当附有中文译本或者国际条约规定的其他文字文本。

**Article 295** A request from a foreign court for a People's Court to provide judicial assistance and the appendices thereto shall be attached with a Chinese translation or any other language version stipulated by the international treaty. A request from a People's Court for a foreign court to provide judicial assistance and the appendices thereto shall be attached with a translation of the request into the country's language or any other language version stipulated by the international treaty.

人民法院请求外国法院提供司法协助的请求书及其所附文件，应当附有该国文字译本或者国际条约规定的其他文字文本。

**第二百九十六条** 人民法院提供司法协助，依照中华人民共和国法律规定的程序进行。外国法院请求采用特殊方式的，也可以按照其请求的特殊方式进行，但请求采用的特殊方式不得违反中华人民共和国法律。

**Article 296** People's Courts shall provide judicial assistance in accordance with the procedures stipulated by the laws of the People's Republic of China. Where a foreign court requests for adoption of a special method, the requested special method may be adopted, provided that the requested special method shall not violate the laws of the People's Republic of China.

**第二百九十七条** 人民法院作出的发生法律效力的判决、裁定，

**Article 297** With respect to a judgment or ruling made by a People's Court which has come into legal effect, where the enforcee or its properties is/are not located in the People's

如果被执行人或者其财产不在中华人民共和国领域内，当事人请求执行的，可以由当事人直接向有管辖权的外国法院申请承认和执行，也可以由人民法院依照中华人民共和国缔结或者参加的国际条约的规定，或者按照互惠原则，请求外国法院承认和执行。

在中华人民共和国领域内依法作出的发生法律效力的仲裁裁决，当事人请求执行的，如果被执行人或者其财产不在中华人民共和国领域内，当事人可以直接向有管辖权的外国法院申请承认和执行。

**Republic of China, and the parties concerned request for enforcement, the parties concerned may submit an application directly to a foreign court which has jurisdiction for ratification and enforcement, or the People's Court may, pursuant to the provisions of the international treaty concluded or participated by the People's Republic of China or in accordance with the principle of reciprocity, request for ratification and enforcement by the foreign court. Where a party applies for enforcement of an arbitral award made in the People's Republic of China pursuant to the law which has come into legal effect, and the person subject to enforcement or its properties are not located in the People's Republic of China, the party may apply directly to a foreign court which has jurisdiction for recognition and enforcement.**

**第二百九十八条** 外国法院作出的发生法律效力的判决、裁定，需要人民法院承认和执行的，可以由当事人直接向有管辖权的中级人民法院申请承认和执行，也可以由外国法院依照该国与中华人民共和国缔结或者参加的国际条约的规定，或者按照互惠原则，请求人民法院承认和执行。

**Article 298 Where a judgment or ruling made by a foreign court which has come into legal effect requires recognition and enforcement by a people's court, a party may apply directly to the intermediate people's court which has jurisdiction for recognition and enforcement, or the foreign court may, pursuant to the provisions of the international treaty concluded or acceded to by the country of the foreign country and the People's Republic of China or under the principle of reciprocity, request for recognition and enforcement by the people's court.**



**第二百九十九条** 人民法院对申请或者请求承认和执行的外国法院作出的发生法律效力的判决、裁定，依照中华人民共和国缔结或者参加的国际条约，或者按照互惠原则进行审查后，认为不违反中华人民共和国法律的基本原则且不损害国家主权、安全、社会公共利益的，裁定承认其效力；需要执行的，发出执行令，依照本法的有关规定执行。

**Article 299** For a judgment or ruling made by a foreign court which has come into legal effect for which recognition and enforcement are applied or requested, where a people's court concludes, upon examination pursuant to the international treaty concluded or acceded to by the People's Republic of China or under the principle of reciprocity, that it does not violate the basic principles of the laws of the People's Republic of China and damage the sovereignty, security or public interest, the people's court shall rule on recognition of the validity; where there is a need for enforcement, an enforcement order shall be issued to enforce such judgment or ruling pursuant to the relevant provisions of this Law.

**第三百条** 对申请或者请求承认和执行的外国法院作出的发生法律效力的判决、裁定，人民法院经审查，有下列情形之一的，裁定不予承认和执行：

（一）依据本法第三百零一条的规定，外国法院对案件无管辖权；

（二）被申请人未得到合法传唤或者虽经合法传唤但未获得合理的陈述、辩论机会，或者无诉讼行为能力的当事人未得到适当代理；

**Article 300** For a judgment or ruling made by a foreign court which has come into legal effect for which recognition and enforcement are applied or requested, a people's court shall rule upon examination not to recognize and enforce such judgment or ruling under any of the following circumstances: (1) the foreign court has no jurisdiction over the case pursuant to the provisions of Article 301 of this Law;

(2) the respondent has not been legitimately summoned, or the respondent has been legitimately summoned but has not been given a reasonable opportunity to make a representation and debate, or the litigant without litigation capacity has not been assigned appropriate agent;

(3) the judgment or ruling is obtained by fraud;

(4) the people's court has made a judgment or ruling on the same dispute, or has recognised the judgment or ruling made by a court of a third country for the same dispute; or

(5) it violates the basic principles of the laws of the People's

（三）判决、裁定是通过欺诈方式取得；

（四）人民法院已对同一纠纷作出判决、裁定，或者已经承认第三国法院对同一纠纷作出的判决、裁定；

（五）违反中华人民共和国法律的基本原则或者损害国家主权、安全、社会公共利益。

Republic of China or harms the State sovereignty, security and public interest.

**第三百零一条** 有下列情形之一的，人民法院应当认定该外国法院对案件无管辖权：

（一）外国法院依照其法律对案件没有管辖权，或者虽然依照其法律有管辖权但与案件所涉纠纷无适当联系；

（二）违反本法对专属管辖的规定；

（三）违反当事人排他性选择法院管辖的协议。

**Article 301** Under any of the following circumstances, the people's court shall deem that a foreign court has no jurisdiction over the case: (1) the foreign court has no jurisdiction over the case pursuant to its laws, or the foreign court has jurisdiction over the case but has no appropriate connection with the dispute involved in the case; (2) the provisions of this Law on exclusive jurisdiction are violated; or (3) the agreement on exclusive choice of court for jurisdiction by the litigants is violated.

**第三百零二条** 当事人向人民

**Article 302** Where a litigant applies to a people's court for recognition and enforcement of a judgment or ruling made by

法院申请承认和执行外国法院作出的发生法律效力判决、裁定，该判决、裁定涉及的纠纷与人民法院正在审理的纠纷属于同一纠纷的，人民法院可以裁定中止诉讼。

外国法院作出的发生法律效力判决、裁定不符合本法规定的承认条件的，人民法院裁定不予承认和执行，并恢复已经中止的诉讼；符合本法规定的承认条件的，人民法院裁定承认其效力；需要执行的，发出执行令，依照本法的有关规定执行；对已经中止的诉讼，裁定驳回起诉。

**第三百零三条** 当事人对承认和执行或者不予承认和执行的裁定不服的，可以自裁定送达之日起十日内向上一级人民法院申请复议。

**第三百零四条** 在中华人民共和国领域外作出的发生法律效力的仲裁裁决，需要人民法院承认和执行的，当事人可以直接向被执行人住所地或者其财产所在地的中级人

**a foreign court which has come into legal effect, and the dispute involved in the said judgment or ruling is the same as the dispute under trial by the people's court, the people's court may rule on suspension of lawsuit.** Where a judgment or ruling made by a foreign court which has come into legal effect does not satisfy the recognition criteria stipulated in this Law, the people's court shall rule not to recognize and enforce it and resume the suspended lawsuit; where the judgment or ruling satisfies the recognition criteria stipulated in this Law, the people's court shall rule on recognition of its validity; where there is a need for enforcement, an enforcement order shall be issued for enforcement pursuant to the relevant provisions of this Law; for the suspended lawsuit, the people's court shall rule to dismiss the action.

**Article 303 A litigant who disagrees with the ruling on recognition and enforcement or non-recognition and enforcement may apply to the higher-level people's court for reconsideration within 10 days from the date of service of the ruling.**

**Article 304 Where an arbitral award made outside the People's Republic of China which has come into legal effect requires recognition and enforcement by a people's court, a litigant may apply directly to the intermediate people's court at the domicile of the person subject to enforcement or the location of its properties. Where the domicile of the person subject to enforcement or the properties are not located in the People's Republic of China, the litigant may apply to the intermediate**

民法院申请。被执行人住所地或者其财产不在中华人民共和国领域内的，当事人可以向申请人住所地或者与裁决的纠纷有适当联系的地点的中级人民法院申请。人民法院应当依照中华人民共和国缔结或者参加的国际条约，或者按照互惠原则办理。

**people's court at the domicile of the applicant or the location which has an appropriate connection with the ruling of the dispute. The people's court shall handle the matter pursuant to the international treaty concluded or acceded to by the People's Republic of China or under the principle of reciprocity.**

**第三百零五条** 涉及外国国家的民事诉讼，适用中华人民共和国有关外国国家豁免的法律规定；有关法律没有规定的，适用本法。

**Article 305** The provisions of the laws of the People's Republic of China on foreign state immunity shall apply to civil lawsuits involving foreign states; where the relevant laws do not provide, this Law shall apply.

**第三百零六条** 本法自公布之日起施行，《中华人民共和国民事诉讼法（试行）》同时废止。

**Article 306** This Law shall be effective as of the date of promulgation, repealing simultaneously the Civil Procedure Law of the People's Republic of China (for Trial Implementation).



扫一扫，手机阅读更方便

# **Exhibit B-5**

## 最高人民法院关于适用《中华人民共和国民事诉讼法》的解释 (2022 修正)

发 文 机 关 ： 最高人民法院	Promulgated by:	Supreme People's Court
发 布 日 期 ： 2022. 04. 01	Promulgation Date:	2022.04.01
生 效 日 期 ： 2022. 04. 10	Effective Date:	2022.04.10
时 效 性 ： 现行有效	Validity Status:	Effective

### 最高人民法院关于适用《中华人民共和国 民事诉讼法》的解释（2022 修正）

（2014 年 12 月 18 日最高人民法院审判委员会第 1636 次会议通过；根据 2020 年 12 月 23 日最高人民法院审判委员会第 1823 次会议通过的《最高人民法院关于修改〈最高人民法院关于人民法院民事调解工作若干问题的规定〉等十九件民事诉讼类司法解释的决定》第一次修正；根据 2022 年 3 月 22 日最高人民法院审判委员会第 1866 次会议通过的《最高人民法院关于修改〈最高人民法院关于适用《中华人民共和国民事诉讼法》的解释〉的决定》第二次修正，该修正

### Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (Amended in 2022)

(Adopted at the 1636th session of the Adjudication Committee of the Supreme People's Court on December 18, 2014; amended for the first time in accordance with the Decision of the Supreme People's Court on Revising 19 Judicial Interpretations on Civil Action Cases Including the Provisions of Supreme People's Court on Several Issues concerning Civil Mediation by People's Courts adopted at the 1823rd session of the Adjudication Committee of the Supreme People's Court on December 23, 2020; and amended for the second time in accordance with the Decision of the Supreme People's Court on the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China adopted at the 1866th session of the Adjudication Committee of the Supreme People's Court on March 22, 2022. The second Amendment shall come into force on April 10, 2022.)

On August 31, 2012, the Decision on Revising the Civil Procedure Law of the People's Republic of China was adopted upon deliberation at the 28th session of the Standing Committee of the 11th National People's Congress. The Interpretation on the Application of the Civil Procedure Law of the People's Republic of China (hereinafter referred to as the "Interpretation") is enacted according to the revised Civil Procedure Law of the People's Republic of China (hereinafter referred to as the "Civil Procedure

最高人民法院关于适用《中华人民共和国民事诉讼法》的解释（2022 修正）

自 2022 年 4 月 10 日起施行）

2012 年 8 月 31 日，第十一届全国人民代表大会常务委员会第二十八次会议审议通过了《关于修改〈中华人民共和国民事诉讼法〉的决定》。根据修改后的民事诉讼法，结合人民法院民事审判和执行工作实际，制定本解释。

Law") and in light of actual civil trials and enforcement work of people's courts.

## 一、管辖

## Chapter I Jurisdiction

**第一条** 民事诉讼法第十九条第一项规定的重大涉外案件，包括争议标的额大的案件、案情复杂的案件，或者一方当事人人数众多等具有重大影响的案件。

**Article 1** The "major cases involving foreign parties" as provided for in Item 1 of Article 18 of the Civil Procedure Law include cases of which the amount of subject matter in dispute is large, cases with complex circumstances, cases in which one party consists of numerous persons and other cases with significant impact.

**第二条** 专利纠纷案件由知识产权法院、最高人民法院确定的中级人民法院和基层人民法院管辖。

**Article 2** Patent disputes are under the jurisdiction of intellectual property courts and intermediate people's courts and basic people's courts determined by the Supreme People's Court. Cases concerning maritime affairs and maritime trade are under the jurisdiction of admiralty courts.

海事、海商案件由海事法院管辖。

**第三条** 公民的住所地是指公民的户籍所在地，法人或者其他组织的住所地是指法人或者其他组织

**Article 3** The domicile of a citizen refers to the place where his/her permanent residence is registered, and the domicile of a legal person or any other organization refers to the place where the main office of the legal person or any other



的主要办事机构所在地。

法人或者其他组织的主要办事机构所在地不能确定的，法人或者其他组织的注册地或者登记地为住所地。

**organization is located.** Where the place of main office of a legal person or any other organization cannot be determined, the registration place of the legal person or any other organization is the domicile thereof.

**第四条** 公民的经常居住地是指公民离开住所地至起诉时已连续居住一年以上的地方，但公民住院就医的地方除外。

**Article 4** The place of habitual residence of a citizen refers to the place where he/she has continuously resided for not less than one year from the time when he/she left his/her domicile to the time of institution of the action, except for the place where he/she is hospitalized.

**第五条** 对没有办事机构的个人合伙、合伙型联营体提起的诉讼，由被告注册登记地人民法院管辖。没有注册登记，几个被告又不在同一辖区的，被告住所地的人民法院都有管辖权。

**Article 5** The lawsuit brought against a partnership of individuals or a partnership association without an office shall come under the jurisdiction of the people's court in the place where the defendant is registered. In the absence of the place of registration and several defendants are not in the same jurisdiction, the people's court in the place where any defendant has a domicile shall have jurisdiction over the lawsuit.

**第六条** 被告被注销户籍的，依照民事诉讼法第二十三条规定确定管辖；原告、被告均被注销户籍的，由被告居住地人民法院管辖。

**Article 6** Where the permanent residence registration of the defendant is cancelled, the jurisdiction shall be determined in accordance with Article 23 of the Civil Procedure Law; where the permanent residence registrations of both the plaintiff and the defendant are cancelled, the case shall come under the jurisdiction of the people's court in the place where the defendant resides.

**第七条** 当事人的户籍迁出后尚未落户，有经常居住地的，由该地人民法院管辖；没有经常居住地

**Article 7** Where the party has not settled down after moving out of his/her registered permanent residence, the case shall come under the jurisdiction of the people's court in the place of habitual residence of the party. In the absence of habitual

的，由其原户籍所在地人民法院管辖。

**residence, the case shall come under the jurisdiction of the people's court in the place where the original permanent residence of the party is located.**

**第八条** 双方当事人都被监禁或者被采取强制性教育措施的，由被告住所地人民法院管辖。被告被监禁或者被采取强制性教育措施一年以上的，由被告被监禁地或者被采取强制性教育措施地人民法院管辖。

**Article 8** Where both parties are imprisoned or subject to compulsory education measures, the people's court in the place where the defendant originally has his/her domicile shall have jurisdiction over the case. Where the defendant is imprisoned or subject to compulsory education measures for not less than one year, the people's court of the place where the defendant is imprisoned, or the compulsory education measures are taken shall have jurisdiction over the case.

**第九条** 追索赡养费、抚养费、抚养费案件的几个被告住所地不在同一辖区的，可以由原告住所地人民法院管辖。

**Article 9** Where several defendants to a case involving claims for support payment, maintenance payment or upbringing payment or do not reside in the same jurisdiction, the people's court in the place where the plaintiff has his/her domicile shall have jurisdiction over the case.

**第十条** 不服指定监护或者变更监护关系的案件，可以由被监护人住所地人民法院管辖。

**Article 10** A case of refusal to accept the designation of guardianship or change of guardianship may be under the jurisdiction of the people's court in the place where the ward has his/her domicile.

**第十一条** 双方当事人均为军人或者军队单位的民事案件由军事法院管辖。

**Article 11** A civil case in which both parties are servicemen or serve military organizations shall be under the jurisdiction of a military court.

**第十二条** 夫妻一方离开住所地超过一年，另一方起诉离婚的案件，可以由原告住所地人民法院管

**Article 12** Where either the husband or the wife has been away from their domicile for more than one year, the divorce case as filed by the other party shall come under the jurisdiction of the people's court in the place where the plaintiff has his/her domicile. Where both the husband and the wife have been away

辖。

夫妻双方离开住所地超过一年，一方起诉离婚的案件，由被告经常居住地人民法院管辖；没有经常居住地的，由原告起诉时被告居住地人民法院管辖。

from their domicile for more than one year, the divorce case filed by one party shall come under the jurisdiction of the people's court in the place where the defendant has his/her habitual residence; in the absence of habitual residence, the case shall come under the jurisdiction of the people's court in the place where the defendant resides at the time of the plaintiff brings the lawsuit.

**第十三条** 在国内结婚并定居国外的华侨，如定居国法院以离婚诉讼须由婚姻缔结地法院管辖为由不予受理，当事人向人民法院提出离婚诉讼的，由婚姻缔结地或者一方在国内的最后居住地人民法院管辖。

**Article 13** For overseas Chinese who marry in China but reside abroad, where the court in the place of their residence rejects their divorce lawsuit on the ground that the lawsuit shall come under the jurisdiction of the court in the place where the marriage is registered, and the party brings a divorce lawsuit with the people's court, the case shall come under the jurisdiction of the people's court in the place where the marriage is registered or the last domestic residence of either party concerned.

**第十四条** 在国外结婚并定居国外的华侨，如定居国法院以离婚诉讼须由国籍所属国法院管辖为由不予受理，当事人向人民法院提出离婚诉讼的，由一方原住所地或者在国内的最后居住地人民法院管辖。

**Article 14** For overseas Chinese who marry and reside abroad, where the court in the place of their residence rejects their divorce lawsuit for the reason that the lawsuit shall come under the jurisdiction of the court of the country of their nationality, and the party files a divorce lawsuit with the people's court, the lawsuit shall come under the jurisdiction of the people's court in the former domicile or the last domestic residence of either party concerned.

**第十五条** 中国公民一方居住在国外，一方居住在国内，不论哪一方向人民法院提起离婚诉讼，国

**Article 15** Where the parties to a divorce case live at home and abroad respectively and both of them are Chinese citizens, the people's court in the domicile of the party residing in China shall have jurisdiction over the lawsuit, no matter which

内一方住所地人民法院都有管辖权。国外一方在居住国法院起诉，国内一方向人民法院起诉的，受诉人民法院有权管辖。

**party files the divorce lawsuit with the people's court. Where the party residing abroad files a lawsuit with the court in the country of his/her residence and the party residing in China files a lawsuit with a people's court, the people's court accepting the lawsuit shall have jurisdiction over the case.**

**第十六条** 中国公民双方在国外但未定居，一方向人民法院起诉离婚的，应由原告或者被告住所地人民法院管辖。

**Article 16 Where both overseas Chinese are abroad but not settle and one party files a divorce lawsuit with a people's court, the lawsuit shall come under the jurisdiction of the people's court in the place where the plaintiff or the defendant has his/her domicile originally.**

**第十七条** 已经离婚的中国公民，双方均定居国外，仅就国内财产分割提起诉讼的，由主要财产所在地人民法院管辖。

**Article 17 Where both divorced overseas Chinese settle abroad and one-party files a lawsuit only for the division of their domestic property, the lawsuit shall come under the jurisdiction of the people's court in the place where their main property is located.**

**第十八条** 合同约定履行地点的，以约定的履行地点为合同履行地。

**Article 18 Where a contract stipulates a place of performance, the place of performance so stipulated shall be the place where the contract is performed.** In the event that a contract does not stipulate a place of performance or does not stipulate it clearly, if the disputed subject matter is payment of money, the place where the party receiving the money is located shall be the place where the contract is performed; if the disputed subject matter is delivery of immovable property, the place where the immovable property is located shall be the place where the contract is performed; as for any other disputed subject matter, the place where the party fulfilling obligations is located shall be the place where the contract is performed. As for a contract with instant settlement, the place of transaction shall be the place where the contract is performed.

合同对履行地点没有约定或者约定不明确，争议标的为给付货币的，接收货币一方所在地为合同履行地；交付不动产的，不动产所在地为合同履行地；其他标的，履行义务一方所在地为合同履行地。即时结清的合同，交易行为地为合同

Where a contract is not actually performed and the domiciles of both parties are not in the place of performance as stipulated by

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履行地。

the contract, the dispute shall come under the jurisdiction of the people's court in the domicile where the defendant has his/her domicile.

合同没有实际履行，当事人双方住所地都不在合同约定的履行地的，由被告住所地人民法院管辖。

**第十九条** 财产租赁合同、融资租赁合同以租赁物使用地为合同履行地。合同对履行地有约定的，从其约定。

**Article 19** For a contract for property leasing or a contract for financial leasing, the place where the leased property is used shall be the place where the contract is performed. Where the contract stipulates the place of performance, such stipulation shall prevail.

**第二十条** 以信息网络方式订立的买卖合同，通过信息网络交付标的的，以买受人住所地为合同履行地；通过其他方式交付标的的，收货地为合同履行地。合同对履行地有约定的，从其约定。

**Article 20** Where a subject is delivered through an information network under a sales contract concluded via the information network, the domicile of the buyer shall be the place where the contract is performed; where the subject is delivered otherwise, the place of receipt shall be the place where the contract is performed. Where the contract stipulates the place of performance, such agreement shall prevail.

**第二十一条** 因财产保险合同纠纷提起的诉讼，如果保险标的物是运输工具或者运输中的货物，可以由运输工具登记注册地、运输目的地、保险事故发生地人民法院管辖。

**Article 21** For a lawsuit filed due to a dispute over a property insurance contract, if the subject matter of insurance is a transport vehicle or the goods in transit, the lawsuit may come under the jurisdiction of the people's court in the place where the transport vehicle is registered, the place of destination or the place where the insured accident occurs. A lawsuit filed due to a dispute over a personal insurance contract may come under the jurisdiction of the people's court in the place where the insured has his/her domicile.

因人身保险合同纠纷提起的诉讼，可以由被保险人住所地人民法

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院管辖。

**第二十二条** 因股东名册记载、请求变更公司登记、股东知情权、公司决议、公司合并、公司分立、公司减资、公司增资等纠纷提起的诉讼，依照民事诉讼法第二十七条规定确定管辖。

**Article 22** For a lawsuit filed due to a dispute over any record in the register of shareholders, request for change of any registered item of a company, shareholders' right to know, a resolution of a company, or merger, division, capital decrease or capital increase of a company, jurisdiction shall be determined in accordance with Article 27 of the Civil Procedure Law.

**第二十三条** 债权人申请支付令，适用民事诉讼法第二十二条规定，由债务人住所地基层人民法院管辖。

**Article 23** The application for a payment order by a creditor shall be governed by Article 22 of the Civil Procedure Law and come under the jurisdiction of the people's court in the place where the debtor has his/her domicile.

**第二十四条** 民事诉讼法第二十九条规定的侵权行为地，包括侵权行为实施地、侵权结果发生地。

**Article 24** The "place of tort" as provided for in Article 29 of the Civil Procedure Law includes the place where the tort is committed and the place where the tortious consequence takes place.

**第二十五条** 信息网络侵权行为为实施地包括实施被诉侵权行为的计算机等信息设备所在地，侵权结果发生地包括被侵权人住所地。

**Article 25** Places where a tort is committed through an information network include the location of information equipment including the computer used to commit the alleged tort, while places where the tortious consequence takes place include the place where the infringed has his/her domicile.

**第二十六条** 因产品、服务质量不合格造成他人财产、人身损害提起的诉讼，产品制造地、产品销

**Article 26** A lawsuit concerning property damage or personal injury resulting from poor quality of products or services shall come under the jurisdiction of the people's court in the place where the products are manufactured, the place where the products are sold, the place where the services are provided, the place of tort or the domicile of the defendant.



被告住所地人民法院都有管辖权。

**第二十七条** 当事人申请诉前保全后没有在法定期间起诉或者申请仲裁，给被申请人、利害关系人造成损失引起的诉讼，由采取保全措施的人民法院管辖。

当事人申请诉前保全后在法定期间内起诉或者申请仲裁，被申请人、利害关系人因保全受到损失提起的诉讼，由受理起诉的人民法院或者采取保全措施的人民法院管辖。

**第二十八条** 民事诉讼法第三十四条第一项规定的不动产纠纷是指因不动产的权利确认、分割、相邻关系等引起的物权纠纷。

农村土地承包经营合同纠纷、房屋租赁合同纠纷、建设工程施工合同纠纷、政策性房屋买卖合同纠纷，按照不动产纠纷确定管辖。

不动产已登记的，以不动产登记簿记载的所在地为不动产所在

**Article 27** Where an applicant fails to file a lawsuit or application for arbitration within the statutory term after applying for pre-action property preservation, and a lawsuit arises from loss to the defendant and interested parties, the lawsuit shall come under the jurisdiction of the people's court that took the measures for pre-action property preservation. Where an applicant files a lawsuit within the statutory term or applies for arbitration after applying for pre-action property preservation, and a lawsuit arises from loss to the defendant and interested parties, the lawsuit shall come under the jurisdiction of the people's court that accepts the lawsuit or the people's court that took the measures for pre-action property preservation.

**Article 28** The "dispute over immovable property" as provided for in Item 1 of Article 34 of the Civil Procedure Law refers to any real right dispute arising from the confirmation of rights, division and neighboring relations of immovable property. For a dispute over a rural land contracted operation contract, a house lease contract, a construction project contract or a policy-based house sale and purchase contract, the jurisdiction over the case shall be determined in light of that for a dispute over immovable property.

Where the immovable property has been registered, the place of location recorded in the immovable property register shall be the place of location of the immovable property; where the immovable property has not been registered, the actual place of location of the immovable property shall be the place of location of the immovable property.



地；不动产未登记的，以不动产实际所在地为不动产所在地。

**第二十九条** 民事诉讼法第三十五条规定的书面协议，包括书面合同中的协议管辖条款或者诉讼前以书面形式达成的选择管辖的协议。

**Article 29** The "agree in writing" as provided for in Article 35 of the Civil Procedure Law includes the negotiated jurisdiction clause under a written contract or the agreement on selection of jurisdiction reached in writing before litigation.

**第三十条** 根据管辖协议，起诉时能够确定管辖法院的，从其约定；不能确定的，依照民事诉讼法的相关规定确定管辖。

**Article 30** Where the people's court with jurisdiction can be determined in accordance with a jurisdiction agreement at the time of litigation, the relevant agreement shall prevail; if the people's court with jurisdiction cannot be determined, the jurisdiction shall be determined in accordance with the relevant provisions of the Civil Procedure Law. Where a jurisdiction agreement stipulates the jurisdiction of not less than two people's courts in the places actually related to a dispute, the plaintiff may file a lawsuit with one of such people's courts.

管辖协议约定两个以上与争议有实际联系的地点的人民法院管辖，原告可以向其中一个人民法院起诉。

**第三十一条** 经营者使用格式条款与消费者订立管辖协议，未采取合理方式提请消费者注意，消费者主张管辖协议无效的，人民法院应予支持。

**Article 31** Where an operator adopts standard terms to conclude a jurisdiction agreement with a consumer but does not prompt the caution of the consumer in a reasonable way, and the consumer claims the jurisdiction agreement to be void, the people's court shall support such claim.

**第三十二条** 管辖协议约定由一方当事人住所地人民法院管辖，

**Article 32** Where a jurisdiction agreement stipulates the jurisdiction of the people's court in the domicile of one party, but the domicile of the said party changes after the conclusion of the agreement, the lawsuit shall come under the

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协议签订后当事人住所地变更的，由签订管辖协议时的住所地人民法院管辖，但当事人另有约定的除外。

**jurisdiction of the people's court in the place where the said party has his/her domicile at the time of conclusion of the agreement, unless otherwise agreed by the parties.**

**第三十三条** 合同转让的，合同的管辖协议对合同受让人有效，但转让时受让人不知道有管辖协议，或者转让协议另有约定且原合同相对人同意的除外。

**Article 33** Where a contract is transferred, the jurisdiction agreement of the contract shall be valid for the transferee of the contract, provided that the transferee does not know about the jurisdiction agreement at the time of transfer or the transfer agreement has any other stipulation and the original counterpart of the contract agrees to the stipulation.

**第三十四条** 当事人因同居或者在解除婚姻、收养关系后发生财产争议，约定管辖的，可以适用民事诉讼法第三十五条规定确定管辖。

**Article 34** Where a dispute over property occurs between the parties due to living together or after dissolution of marriage or an adoptive relationship, and a jurisdiction agreement has been concluded, the jurisdiction may be determined in accordance with Article 34 of the Civil Procedure Law.

**第三十五条** 当事人在答辩期间届满后未应诉答辩，人民法院在一审开庭前，发现案件不属于本院管辖的，应当裁定移送有管辖权的人民法院。

**Article 35** Where one party fails to reply after the expiration of the defense period and the people's court finds that the case is not under its jurisdiction before the hearing of the first instance, the people's court shall rule to refer the case to the people's court of competent jurisdiction.

**第三十六条** 两个以上人民法院都有管辖权的诉讼，先立案的人民法院不得将案件移送给另一个有管辖权的人民法院。人民法院在立

**Article 36** Where two or more people's courts have jurisdiction over the same case, the people's court placing the case on the docket first shall not refer the case to another people's court of competent jurisdiction. Where the people's court finds before placing the case on the docket that the case has placed on the docket by another people's court of competent

案前发现其他有管辖权的人民法院已先立案的，不得重复立案；立案后发现其他有管辖权的人民法院已先立案的，裁定将案件移送给先立案的人民法院。

**jurisdiction, it shall not place the case on the docket again; and if it finds that another people's court of competent jurisdiction has placed the case on the docket earlier, it shall rule to refer the case to such people's court.**

**第三十七条** 案件受理后，受诉人民法院的管辖权不受当事人住所地、经常居住地变更的影响。

**Article 37** After a case has been accepted, the jurisdiction of the people's court with which the case is filed will not be affected by the change of the domicile or the place of habitual residence of the party.

**第三十八条** 有管辖权的人民法院受理案件后，不得以行政区域变更为由，将案件移送给变更后有管辖权的人民法院。判决后的上诉案件和依审判监督程序提审的案件，由原审人民法院的上级人民法院进行审判；上级人民法院指令再审、发回重审的案件，由原审人民法院再审或者重审。

**Article 38** After a people's court of competent jurisdiction has accepted a case, it shall not refer the case to other people's courts of competent jurisdiction after alternation as an excuse for the change of administrative area. The appellate case after adjudication or the case brought up for trial in accordance with the procedure for trial supervision shall be tried by the higher people's court of the people's court of original trial; and the case instructed for retrial or remanded for retrial or trial anew by the people's court at a higher level shall be so retried or tried anew by the people's court of original trial.

**第三十九条** 人民法院对管辖异议审查后确定有管辖权的，不因当事人提起反诉、增加或者变更诉讼请求等改变管辖，但违反级别管辖、专属管辖规定的除外。

**Article 39** Where a people's court is confirmed as having jurisdiction upon examination of an objection to jurisdiction, the jurisdiction will not be changed due to the filing of counterclaim, addition or change of claims by any party, provided that any provision on court-level jurisdiction or exclusive jurisdiction is violated. Where any party raises an objection to jurisdiction in relation to a case remanded by the people's court for trial anew or a case to be retried as per the procedure of first instance, the people's court shall not examine the jurisdiction.

人民法院发回重审或者按第一

审程序再审的案件，当事人提出管辖异议的，人民法院不予审查。

**第四十条** 依照民事诉讼法第三十八条第二款规定，发生管辖权争议的两个人民法院因协商不成报请它们的共同上级人民法院指定管辖时，双方为同属一个地、市辖区的基层人民法院的，由该地、市的中级人民法院及时指定管辖；同属一个省、自治区、直辖市的两个人民法院的，由该省、自治区、直辖市的高级人民法院及时指定管辖；双方为跨省、自治区、直辖市的人民法院，高级人民法院协商不成的，由最高人民法院及时指定管辖。

依照前款规定报请上级人民法院指定管辖时，应当逐级进行。

**第四十一条** 人民法院依照民事诉讼法第三十八条第二款规定指定管辖的，应当作出裁定。

对报请上级人民法院指定管辖的案件，下级人民法院应当中止审

**Article 40** In the event that two people's courts between which there is a jurisdictional dispute cannot reach unanimity upon negotiations and report the dispute to their common superior people's court to designate the jurisdiction in accordance with Paragraph 2 of Article 37 of the Civil Procedure Law, where both courts are basic people's courts under the jurisdiction of the same district or city, the intermediate people's court of that district or city shall timely designate the jurisdiction; where both courts are the people's courts in the same province, autonomous region or municipality directly under the Central Government, the higher people's court of that province, autonomous region or municipality directly under the Central Government shall timely designate the jurisdiction; where both courts are the people's courts in two provinces, autonomous regions or municipalities directly under the Central Government and the higher people's courts cannot reach unanimity upon negotiation, the Supreme People's Court shall timely designate the jurisdiction. The application for designation of jurisdiction by superior people's courts in accordance with the preceding paragraph shall be made level by level.

**Article 41** Where a people's court designates the jurisdiction in accordance with Paragraph 2 of Article 38 of the Civil Procedure Law, it shall make a ruling on the designation. The people's court at a lower level shall suspend the trial of a case submitted to the superior people's court for designation of jurisdiction. Where the people's court at a lower level has made a judgment or ruling before a ruling of designation of jurisdiction is made, the superior people's court shall revoke the judgment or

理。指定管辖裁定作出前，下级人民法院对案件作出判决、裁定的，上级人民法院应当在裁定指定管辖的同时，一并撤销下级人民法院的判决、裁定。

ruling of the people's court at a lower level while ruling on the designation of jurisdiction.

**第四十二条** 下列第一审民事案件，人民法院依照民事诉讼法第三十九条第一款规定，可以在开庭前交下级人民法院审理：

（一）破产程序中有关债务人的诉讼案件；

（二）当事人人数众多且不方便诉讼的案件；

（三）最高人民法院确定的其他类型案件。

**Article 42** In accordance with Paragraph 1 of Article 39 of the Civil Procedure Law, a people's court may forward the following civil cases of first instance to the people's court at a lower level before the court session: 1. cases concerning debtors in bankruptcy proceedings;

2. cases with a large number of parties and inconvenient litigation; and

3. cases of other types determined by the Supreme People's Court.

Before forwarding a case to the people's court at a lower level for trial, a people's court shall report this to its superior people's court for approval. After approval by the superior people's court, the people's court shall forward the case to the people's court at a lower level for trial.

人民法院交下级人民法院审理前，应当报请其上级人民法院批准。上级人民法院批准后，人民法院应当裁定将案件交下级人民法院审理。

## 二、回避

## Chapter II Recusal

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**第四十三条** 审判人员有下列情形之一的，应当自行回避，当事人有权申请其回避：

（一）是本案当事人或者当事人近亲属的；

（二）本人或者其近亲属与本案有利害关系的；

（三）担任过本案的证人、鉴定人、辩护人、诉讼代理人、翻译人员的；

（四）是本案诉讼代理人近亲属的；

（五）本人或者其近亲属持有本案非上市公司当事人的股份或者股权的；

（六）与本案当事人或者诉讼代理人有其他利害关系，可能影响公正审理的。

**Article 43 A judge falling under any of the following circumstances shall recuse himself/herself from a case, and any party has the right to apply for the recusal of such a judge from the case:**

1. the judge is a party or a close relative of a party in the case;

2. the judge or a close relative thereof is an interested party in the case;

3. the judge worked as a witness, expert, defender, agent ad litem or interpreter in the case;

4. the judge is a close relative of the agent ad litem in the case;

5. the judge or a close relative thereof holds shares or equity of the non-listed company which is a party in the case; or

6. the judge has any other relation of interest with a party or agent ad litem in the case, which may hinder a fair hearing.

**第四十四条** 审判人员有下列情形之一的，当事人有权申请其回

**Article 44 For a judge under any of the following circumstances, any party has the right to apply for the recusal of such judge from the case:** 1. the judge receives the entertainment of a party to the case or agent thereof or takes part

避：

（一）接受本案当事人及其受托人宴请，或者参加由其支付费用的活动的；

（二）索取、接受本案当事人及其受托人财物或者其他利益的；

（三）违反规定会见本案当事人、诉讼代理人的；

（四）为本案当事人推荐、介绍诉讼代理人，或者为律师、其他人员介绍代理本案的；

（五）向本案当事人及其受托人借用款物的；

（六）有其他不正当行为，可能影响公正审理的。

in any activity at the cost of the party in the case or agent thereof;

2. the judge asks for or receives any property or other interest from a party to the case or agent thereof;

3. the judge meets with a party or agent ad litem in the case in violation of the relevant provisions;

4. the judge recommends or introduces an agent ad litem to a party to the case, or introduces the case to a lawyer or any other person;

5. the judge borrows money or any material from a party to the case or agent thereof; or

6. the judge commits any other improper act, which may hinder a fair hearing.

**第四十五条** 在一个审判程序中参与过本案审判工作的审判人员，不得再参与该案其他程序的审判。

发回重审的案件，在一审法院

**Article 45** A judge who participates in a judicial procedure of the trial of a case shall not participate in any other procedure of trial of the case. Where a case remanded for retrial enters the procedure of second instance after the people's court of first instance makes a ruling, the judges who have participated in the procedure of second instance will not be subject to the provisions of the preceding paragraph.



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作出裁判后又进入第二审程序的，  
原第二审程序中审判人员不受前款  
规定的限制。

**第四十六条** 审判人员有应当回避的情形，没有自行回避，当事人也没有申请其回避的，由院长或者审判委员会决定其回避。

**Article 46** Where a judge falls under a circumstance of recusal, but he/she neither voluntarily recuses himself/herself from the case nor any party applies for his/her recusal, a court president or Adjudication Committee shall decide his/her recusal.

**第四十七条** 人民法院应当依法告知当事人对合议庭组成人员、独任审判员和书记员等人员有申请回避的权利。

**Article 47** A people's court shall lawfully inform the parties that they have the right to apply for recusal of any member of the collegiate bench, a single judge or clerk, or any other person.

**第四十八条** 民事诉讼法第四十七条所称的审判人员，包括参与本案审理的人民法院院长、副院长、审判委员会委员、庭长、副庭长、审判员和人民陪审员。

**Article 48** The "judges" as provided for in Article 47 of the Civil Procedure Law include the president, vice president, members of the Adjudication Committee, presiding judge, vice presiding judge, judges, assistant judges and people's jurors of the people's court participating in the trial of a case.

**第四十九条** 书记员和执法人员适用审判人员回避的有关规定。

**Article 49** The relevant provisions on recusal of judges shall apply to clerks and enforcement officers.

### 三、诉讼参加人

### Chapter III Litigation Participants

**第五十条** 法人的法定代表人以依法登记的为准，但法律另有规定的除外。依法不需要办理登记的

**Article 50** The legal representative of a legal person shall be subject to that registered according to law, unless otherwise provided by the law. The chief in charge of a legal person, which does not need to go through registration in accordance with the law, is its legal representative; if the legal person

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法人，以其正职负责人为法定代表人；没有正职负责人的，以其主持工作的副职负责人为法定代表人。

法定代表人已经变更，但未完成登记，变更后的法定代表人要求代表法人参加诉讼的，人民法院可以准许。

其他组织，以其主要负责人为代表人。

**第五十一条** 在诉讼中，法人的法定代表人变更的，由新的法定代表人继续进行诉讼，并应向人民法院提交新的法定代表人身份证明书。原法定代表人进行的诉讼行为有效。

前款规定，适用于其他组织参加的诉讼。

**第五十二条** 民事诉讼法第五十一条规定的其他组织是指合法成立、有一定的组织机构和财产，但又不具备法人资格的组织，包括：

（一）依法登记领取营业执照的

**does not have a chief in charge, the deputy head in charge of the relevant work shall be its legal representative.** Where a legal representative has changed but registration formalities have not been completed, and the legal representative after the change requests to represent the legal person in the litigation, the people's court shall permit the request.

With regard to any other organization, the person chiefly in charge shall be its representative.

**Article 51** In litigation, where the legal representative of a legal person is changed, the new legal representative shall process the litigation, and the identity certification of the new legal representative shall be submitted to the people's court. The litigation conducted by the original legal representative shall be still valid. The provisions of the preceding paragraph shall apply to litigation in which other organizations participate.

**Article 52 "Other organizations" as provided for in Article 51 of the Civil Procedure Law refer to the organizations that are lawfully established, have certain organizational bodies and property but do not have the status of legal person, and include:** 1. sole proprietorships that have been registered and obtained business licenses in accordance with the law;

2. partnerships that have been registered and obtained business

个人独资企业；

licenses in accordance with the law;

（二）依法登记领取营业执照的  
合伙企业；

3. Chinese-foreign contractual joint ventures and foreign-funded enterprises that have been registered and obtained Chinese business licenses in accordance with the law;

（三）依法登记领取我国营业执照的中外合作经营企业、外资企业；

4. branches and representative offices that are established by social organizations in accordance with the law;

（四）依法成立的社会团体的分支机构、代表机构；

5. branches that are established by legal persons and have obtained business licenses in accordance with the law;

6. branches of commercial banks, policy-based banks and non-banking financial institutions that are established and have obtained business licenses in accordance with the law;

（五）依法设立并领取营业执照的法人的分支机构；

7. enterprises run by towns and sub-districts that have been registered and have obtained business licenses in accordance with the law; and

（六）依法设立并领取营业执照的商业银行、政策性银行和非银行金融机构的分支机构；

8. other organizations meeting the requirements set out in the present article.

（七）经依法登记领取营业执照的乡镇企业、街道企业；

（八）其他符合本条规定条件的组织。

**第五十三条** 法人非依法设立的分支机构，或者虽依法设立，但没有领取营业执照的分支机构，以

**Article 53** For a branch established by a legal person not in accordance with the law or a branch of a legal person that is established in accordance with the law but has not obtained a business license, the legal person that has established the branch shall be the party.

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设立该分支机构的法人为当事人。

**第五十四条** 以挂靠形式从事民事活动，当事人请求由挂靠人和被挂靠人依法承担民事责任的，该挂靠人和被挂靠人为共同诉讼人。

**Article 54** Where civil activities are conducted in the form of affiliation, and the party claims that the affiliate and the affiliated shall bear civil liability according to law, the said affiliate and the affiliated shall be co-litigants.

**第五十五条** 在诉讼中，一方当事人死亡，需要等待继承人表明是否参加诉讼的，裁定中止诉讼。人民法院应当及时通知继承人作为当事人承担诉讼，被继承人已经进行的诉讼行为对承担诉讼的继承人有效。

**Article 55** In litigation, if a party is deceased and it is necessary to await the statement of the inheritor thereof whether he/she will participate in the litigation, the litigation shall be ruled for suspension. The people's court shall timely notify the inheritor to participate in the litigation as a party, and the litigation conducted by the deceased shall be valid for the inheritor that participates in the litigation.

**第五十六条** 法人或者其他组织的工作人员执行工作任务造成他人损害的，该法人或者其他组织为当事人。

**Article 56** Where a staff member of a legal person or any other organization causes damage to any other person when performing a task, the said legal person or other organization shall be the party.

**第五十七条** 提供劳务一方因劳务造成他人损害，受害人提起诉讼的，以接受劳务一方为被告。

**Article 57** Where a party providing labor services causes damage to any other person due to labor services, and the victim institutes litigation, the party receiving such services shall be the defendant.

**第五十八条** 在劳务派遣期间，被派遣的工作人员因执行工作任务造成他人损害的，以接受劳务

**Article 58** During the period of labor dispatch, if the dispatched worker causes damage to others due to his performance of work tasks, the employer to which the labor is dispatched shall be the party. Where the party claims that the labor dispatch organization shall bear the liability, the labor

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派遣的用工单位为当事人。当事人主张劳务派遣单位承担责任的，该劳务派遣单位为共同被告。

**dispatch organization shall be the joint defendant.**

**第五十九条** 在诉讼中，个体工商户以营业执照上登记的经营者为当事人。有字号的，以营业执照上登记的字号为当事人，但应同时注明该字号经营者的基本信息。

营业执照上登记的经营者与实际经营者不一致的，以登记的经营者和实际经营者为共同诉讼人。

**Article 59** In litigation, the operator registered on the business license of an individual business shall be the party. If the individual business has a trade name, such trade name registered on the business license shall be the party, and the basic information of the operator of the said trade name shall be indicated simultaneously. If the operator registered on the business license is inconsistent with the actual operator, the registered operator and the actual operator shall be co-litigants.

**第六十条** 在诉讼中，未依法登记领取营业执照的个人合伙的全体合伙人为共同诉讼人。个人合伙有依法核准登记的字号的，应在法律文书中注明登记的字号。全体合伙人可以推选代表人；被推选的代表人，应由全体合伙人出具推选书。

**Article 60** In litigation, all the partners in an individual partnership, which has not been registered and has not obtained a business license in accordance with the law, shall be co-litigants. Where the individual partnership has a trade name as approved and registered in accordance with the law, such trade name shall be stated in legal documents. All the partners may elect a representative; and a letter of election shall be issued by them for such elected representative.

**第六十一条** 当事人之间的纠纷经人民调解委员会或者其他依法设立的调解组织调解达成协议后，一方当事人不履行调解协议，另一

**Article 61** In the event that both parties reach an agreement on a dispute between them after mediation by the people's mediation committee or any other duly established mediation agency, if one party fails to perform the mediation agreement, and the other party files a lawsuit with a people's court, the counterparty shall be the defendant.

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方当事人向人民法院提起诉讼的，  
应以对方当事人作为被告。

**第六十二条** 下列情形，以行为人为当事人：

（一）法人或者其他组织应登记而未登记，行为人即以该法人或者其他组织名义进行民事活动的；

（二）行为人没有代理权、超越代理权或者代理权终止后以被代理人名义进行民事活动的，但相对人有理由相信行为人有代理权的除外；

（三）法人或者其他组织依法终止后，行为人仍以其名义进行民事活动的。

**第六十三条** 企业法人合并的，因合并前的民事活动发生的纠纷，以合并后的企业为当事人；企业法人分立的，因分立前的民事活动发生的纠纷，以分立后的企业为共同诉讼人。

**第六十四条** 企业法人解散

**Article 62** In any of the following circumstances, the person conducting the relevant act shall be the party: 1. the party conducts civil activities in the name of a legal person or any other organization unregistered, which should have been registered; 2. the party does not have the authority of agency, overrides the authority of agency or conducts any civil activity in the name of the principal after termination of the authority of agency, unless the counterpart has reasons to believe that the party has the authority of agency; or 3. the party still conducts civil activities in the name of a legal person or any other organization after lawful termination thereof.

**Article 63** In the case of merger of enterprises as legal persons, for a dispute over civil activities occurring before the merger, the enterprise after merger shall be one party ; in the case of division of an enterprise as legal person, for a dispute over civil activities occurring before the division, the enterprises after the division shall be co-litigants.

**Article 64** In the case of dissolution of an enterprise as legal

的，依法清算并注销前，以该企业法人为当事人；未依法清算即被注销的，以该企业法人的股东、发起人或者出资人为当事人。

**person, before lawful liquidation and deregistration, the said enterprise with legal personality shall be the party; where an enterprise as legal person is deregistered before lawful liquidation, the shareholders, promoters or contributors of the said enterprise as legal person shall be the parties.**

**第六十五条** 借用业务介绍信、合同专用章、盖章的空白合同书或者银行账户的，出借单位和借用人为共同诉讼人。

**Article 65** For the borrowing of a business letter of introduction, special seal for contractual uses, blank sealed contract or bank account, the lender and the borrower shall be co-litigants.

**第六十六条** 因保证合同纠纷提起的诉讼，债权人向保证人和被保证人一并主张权利的，人民法院应当将保证人和被保证人列为共同被告。保证合同约定为一般保证，债权人仅起诉保证人的，人民法院应当通知被保证人作为共同被告参加诉讼；债权人仅起诉被保证人的，可以只列被保证人为被告。

**Article 66** For a lawsuit concerning a dispute over a security contract, where the creditor claims its rights against the guarantor and the guarantee, the people's court shall take the guarantor and the guarantee as co-defendants. Where the security contract stipulates a general guarantee and the creditor sues only against the guarantor, the people's court shall notify the guarantee to participate in litigation as a co-defendant; and where the creditor sues only against the guarantee, a people's court may only take the guarantee as the defendant.

**第六十七条** 无民事行为能力人、限制民事行为能力人造成他人损害的，无民事行为能力人、限制民事行为能力人及其监护人为共同被告。

**Article 67** Where any person without capacity for civil conduct or with limited capacity for civil conduct causes damage to any other person, the said person without capacity for civil conduct or with limited capacity for civil conduct and the guardian thereof shall be co-defendants.

**第六十八条** 居民委员会、村

**Article 68** Where there is any civil dispute between any



民委员会或者村民小组与他人发生民事纠纷的，居民委员会、村民委员会或者有独立财产的村民小组为当事人。

**neighborhood committee, villagers' committee or villagers' group and any other person, the neighborhood committee, villagers' committee or villagers' group with independent property shall be one party.**

**第六十九条** 对侵害死者遗体、遗骨以及姓名、肖像、名誉、荣誉、隐私等行为提起诉讼的，死者的近亲属为当事人。

**Article 69** Where a lawsuit is filed for any damage to the remains, osseous remains and name, portrait, reputation, honor or privacy of the deceased, a close relative of the deceased shall be one party.

**第七十条** 在继承遗产的诉讼中，部分继承人起诉的，人民法院应通知其他继承人作为共同原告参加诉讼；被通知的继承人不愿意参加诉讼又未明确表示放弃实体权利的，人民法院仍应将其列为共同原告。

**Article 70** Where, in a lawsuit of inheritance, only a portion of the inheritors file the lawsuit, the people's court shall notify other inheritors to participate in the litigation as co-plaintiffs; if any inheritor as notified is not willing to participate in the litigation but does not clearly express waiver of his/her substantive rights, the people's court shall still list him/her as a co-plaintiff.

**第七十一条** 原告起诉被代理人和代理人，要求承担连带责任的，被代理人 and 代理人为共同被告。

**Article 71** Where the plaintiff sues a principal and the agent thereof and requires them to bear joint and several liability, the principal and the agent shall be co-defendants. Where the plaintiff sues the agent and the counterparty and requires them to bear joint and several liability, the agent and the counterparty shall be co-defendants.

原告起诉代理人和相对人，要求承担连带责任的，代理人和相对人为共同被告。

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**第七十二条** 共有财产权受到他人侵害，部分共有人起诉的，其他共有人为共同诉讼人。

**Article 72** Where, after a common property right is infringed upon by others, and some of the co-owners sue, the other co-owners are co-litigants.

**第七十三条** 必须共同进行诉讼的当事人没有参加诉讼的，人民法院应当依照民事诉讼法第一百三十五条的规定，通知其参加；当事人也可以向人民法院申请追加。人民法院对当事人提出的申请，应当进行审查，申请理由不成立的，裁定驳回；申请理由成立的，书面通知被追加的当事人参加诉讼。

**Article 73** Where one party that should participate in litigation fails to do so, a people's court shall notify such party concerned to participate in the litigation in accordance with **Article 135 of the Civil Procedure Law**; the party may also apply to the people's court to add the party as an additional party. The people's court shall examine the application filed by the party and shall reject the application where the application reason is untenable; or shall notify in written form the additional party to participate in the litigation where the application reason is tenable.

**第七十四条** 人民法院追加共同诉讼的当事人时，应当通知其他当事人。应当追加的原告，已明确表示放弃实体权利的，可不予追加；既不愿意参加诉讼，又不放弃实体权利的，仍应追加为共同原告，其不参加诉讼，不影响人民法院对案件的审理和依法作出判决。

**Article 74** When a people's court adds any parties to a joint lawsuit, it shall give a notice to the other parties. Where a plaintiff that should be added has clearly waived their substantial rights thereto, the plaintiff need not be added; where a plaintiff is reluctant to participate in litigation but is also reluctant to waive their substantial rights, the plaintiff shall still be added as a co-plaintiff. Such plaintiff's failure to participate in litigation will not affect the trial or decision of the people's court made in accordance with the law.

**第七十五条** 民事诉讼法第五十六条、第五十七条和第二百零六条规定的人数众多，一般指十人以

**Article 75** The "numerous persons" as provided for in **Articles 56, 57 and 206 of the Civil Procedure Law** generally refer to ten persons or more.

上。

**第七十六条** 依照民事诉讼法第五十六条规定，当事人一方人数众多在起诉时确定的，可以由全体当事人推选共同的代表人，也可以由部分当事人推选自己的代表人；推选不出代表人的当事人，在必要的共同诉讼中可以自己参加诉讼，在普通的共同诉讼中可以另行起诉。

**Article 76** According to Article 56 of the Civil Procedure Law, where the exact number of litigants in one party consisting of numerous persons is certain at the time of filing of the lawsuit, all the parties may elect common representatives, or a portion of the parties may elect their own representatives; where the parties cannot elect representatives, they may participate in the litigation themselves in the case of a necessary joint action, or may file another lawsuit in the case of a general joint action.

**第七十七条** 根据民事诉讼法第五十七条规定，当事人一方人数众多在起诉时不确定的，由当事人推选代表人。当事人推选不出的，可以由人民法院提出人选与当事人协商；协商不成的，也可以由人民法院在起诉的当事人中指定代表人。

**Article 77** According to Article 57 of the Civil Procedure Law, where the exact number of litigants in one party consisting of numerous persons is uncertain at the time of filing of the lawsuit, the parties may elect common representatives. Where the parties are unable to elect representatives, a people's court may nominate representatives and then negotiate with the parties; where the negotiation fails, the people's court may designate representatives among the parties that file the lawsuit.

**第七十八条** 民事诉讼法第五十六条和第五十七条规定的代表人为二至五人，每位代表人可以委托一至二人作为诉讼代理人。

**Article 78** The number of representatives prescribed in Articles 56 and 57 of the Civil Procedure Law shall be two to five, and each representative may authorize one or two persons as the agent ad litem thereof.

**第七十九条** 依照民事诉讼法

**Article 79** For a case accepted in accordance with Article 57 of

第五十七条规定受理的案件，人民法院可以发出公告，通知权利人向人民法院登记。公告期间根据案件的具体情况确定，但不得少于三十日。

**the Civil Procedure Law, a people's court may issue a public notice to notify the claimant to register with the people's court. The term of the public notice shall be determined based on the specific case and shall not be less than 30 days.**

**第八十条** 根据民事诉讼法第五十七条规定向人民法院登记的权利人，应当证明其与对方当事人的法律关系和所受到的损害。证明不了的，不予登记，权利人可以另行起诉。人民法院的裁判在登记的范围内执行。未参加登记的权利人提起訴訟，人民法院认定其请求成立的，裁定适用人民法院已作出的判决、裁定。

**Article 80 A claimant registered with a people's court in accordance with Article 57 of the Civil Procedure Law shall prove the legal relationship between the claimant and the opposing party and the damage suffered thereby. Where the claimant fails to do so, the claimant will not be registered, and may file a separate lawsuit. The judgment made by the people's court shall be enforced within the scope of registration. Where a claimant that has not been registered files a lawsuit, and a people's court affirms the claim thereof, the people's court shall apply the judgment or ruling rendered by an appropriate people's court.**

**第八十一条** 根据民事诉讼法第五十九条的规定，有独立请求权的第三人有权向人民法院提出诉讼请求和事实、理由，成为当事人；无独立请求权的第三人，可以申请或者由人民法院通知参加诉讼。

**Article 81 According to Article 59 of the Civil Procedure Law, a third party with an independent claim has the right to present claims, facts and reasons to a people's court and become one party ; and a third party without an independent claim may apply for participation in litigation or be notified by the people's court to participate in litigation. Where a third party does not participate in litigation in the procedure of first instance but applies to participate in the procedure of second instance, the people's court may permit the same.**

第一审程序中未参加诉讼的第三人，申请参加第二审程序的，人

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民法院可以准许。

**第八十二条** 在一审诉讼中，无独立请求权的第三人无权提出管辖异议，无权放弃、变更诉讼请求或者申请撤诉，被判决承担民事责任的，有权提起上诉。

**第八十三条** 在诉讼中，无民事行为能力人、限制民事行为能力人的监护人是他的法定代理人。事先没有确定监护人的，可以由有监护资格的人协商确定；协商不成的，由人民法院在他们之中指定诉讼中的法定代理人。当事人没有民法典第二十七条、第二十八条规定的监护人的，可以指定民法典第三十二条规定的有关组织担任诉讼中的法定代理人。

**第八十四条** 无民事行为能力人、限制民事行为能力人以及其他依法不能作为诉讼代理人的，当事人不得委托其作为诉讼代理人。

**第八十五条** 根据民事诉讼法第六十一条第二款第二项规定，与

**Article 82** In litigation of first instance, a third party without an independent claim has no right to challenge the jurisdiction, waive or alter any claim, or apply for withdrawal of the action, but has the right to institute an appeal where ordered to assume civil liability.

**Article 83** In litigation, the guardian of a person without capacity for civil conduct or with limited capacity for civil conduct is his/her statutory agent. Where the guardian has not been determined in advance, the persons qualified for guardianship may determine the guardian through negotiation; where they cannot reach unanimity through negotiations, the people's court shall designate a statutory agent in litigation among the persons qualified for guardianship. Where there is no guardian prescribed in Article 27 or 28 of the Civil Code, the people's court may designate a relevant organization prescribed in Article 32 of the Civil Code to act as the statutory agent in litigation.

**Article 84** Where any person without capacity for civil conduct or with limited capacity for civil conduct and any other person cannot act as an agent ad litem in accordance with the law, the party shall not entrust such person as an agent ad litem.

**Article 85** According to Item 2, Paragraph 2 of Article 61 of the Civil Procedure Law, any relative with a conjugal relation, direct blood relation, collateral blood relation within three

当事人有夫妻、直系血亲、三代以内旁系血亲、近姻亲关系以及其他有抚养、赡养关系的亲属，可以当事人近亲属的名义作为诉讼代理人。

**generations, close affinity, upbringing relationship or relationship of support may act as an agent ad litem in the name of a close relative of one party.**

**第八十六条** 根据民事诉讼法第六十一条第二款第二项规定，与当事人有合法劳动人事关系的职工，可以当事人工作人员的名义作为诉讼代理人。

**Article 86 According to Item 2, Paragraph 2 of Article 61 of the Civil Procedure Law, any worker with a legal labor and personnel relationship with a party may act as an agent ad litem in the name of the worker of the party.**

**第八十七条** 根据民事诉讼法第六十一条第二款第三项规定，有关社会团体推荐公民担任诉讼代理人的，应当符合下列条件：

（一）社会团体属于依法登记设立或者依法免于登记设立的非营利性法人组织；

（二）被代理人属于该社会团体的成员，或者当事人一方住所地位于该社会团体的活动地域；

（三）代理事务属于该社会团体章程载明的业务范围；

**Article 87 According to Item 3, Paragraph 2 of Article 61 of the Civil Procedure Law, where a relevant social organization recommends a citizen to work as an agent ad litem, the following conditions shall be met: 1. the social organization is a non-profit legal person organization registered or exempted from registration in accordance with the law;**

**2. the principal is a member of the said social organization, or the domicile of one party is located in the area of activities of the said social organization;**

**3. agency affairs are within the business scope specified in the articles of association of the said social organization; and**

**4. the citizen recommended is the person in charge of the said social organization or a worker with a lawful labor and personnel relationship with the said social organization.**

**As recommended by the All-China Patent Attorneys Association, a patent agent may work as an agent ad litem in a case of patent dispute.**

（四）被推荐的公民是该社会团体的负责人或者与该社会团体有合法劳动人事关系的工作人员。

专利代理人经中华全国专利代理人协会推荐，可以在专利纠纷案件中担任诉讼代理人。

**第八十八条** 诉讼代理人除根据民事诉讼法第六十二条规定提交授权委托书外，还应当按照下列规定向人民法院提交相关材料：

（一）律师应当提交律师执业证、律师事务所证明材料；

（二）基层法律服务工作者应当提交法律服务工作者执业证、基层法律服务所出具的介绍信以及当事人一方位于本辖区内的证明材料；

（三）当事人的近亲属应当提交身份证件和与委托人有近亲属关系的证明材料；

（四）当事人的工作人员应当提交身份证件和与当事人有合法劳动

**Article 88** In addition to the power of attorney specified in Article 62 of the Civil Procedure Law, an agent ad litem shall also submit the relevant materials to the people's court in accordance with the following provisions: 1. a lawyer shall submit the lawyer practising license and supporting documents issued by the law firm he/she serves;

2. a grassroots legal service worker shall submit the practising license of legal service worker, a letter of introduction issued by a grassroots legal service office as well as the supporting documents that one party is located in the same jurisdiction;

3. a close relative of one party shall submit his/her identity certificate and the supporting documents on his/her close relationship with the principal;

4. a worker of one party shall submit his identity certificate and the supporting documents on his/her lawful labor and personnel relationship with the party;

5. a citizen recommended by the community that one party resides in or the employer that one party serves shall submit his/her identity certificate, recommendation materials as well as the materials proving that the party resides in the said community or serves the employer; and

6. a citizen recommended by a relevant social organization shall provide his/her identity and other supporting documents meeting



人事关系的证明材料；

the conditions set out in Article 87 of this Interpretation.

（五）当事人所在社区、单位推荐的公民应当提交身份证件、推荐材料和当事人属于该社区、单位的证明材料；

（六）有关社会团体推荐的公民应当提交身份证件和符合本解释第八十七条规定条件的证明材料。

**第八十九条** 当事人向人民法院提交的授权委托书，应当在开庭审理前送交人民法院。授权委托书仅写“全权代理”而无具体授权的，诉讼代理人无权代为承认、放弃、变更诉讼请求，进行和解，提出反诉或者提起上诉。

适用简易程序审理的案件，双方当事人同时到庭并径行开庭审理的，可以当场口头委托诉讼代理人，由人民法院记入笔录。

**Article 89** The power of attorney to be submitted to the people's court by one party shall be so submitted before the court session. Where the power of attorney only states "general agency" without specific items of authorization, the agent ad litem has no right to admit, waive or alter claims, conduct reconciliation and file a counterclaim or appeal for the party. Where both parties in a case suitable for the summary procedure for hearing appear before the court at the same time, and a hearing is held directly, they may orally entrust agents ad litem on the site, which shall be written down by the people's court in its records.

#### 四、证据

#### Chapter IV Evidence

**第九十条** 当事人对自己提出的诉讼请求所依据的事实或者反驳

**Article 90** Each party concerned shall provide evidence to prove the facts based on which such party concerned makes a claim or contradicts the claim of the other party, unless

对方诉讼请求所依据的事实，应当提供证据加以证明，但法律另有规定的除外。

在作出判决前，当事人未能提供证据或者证据不足以证明其事实主张的，由负有举证证明责任的当事人承担不利的后果。

**otherwise provided by the law.** Where any party concerned fails to provide evidence or provides insufficient evidence to prove the facts before a judgment is made, the party with the burden of proof shall bear adverse consequences.

**第九十一条** 人民法院应当依照下列原则确定举证证明责任的承担，但法律另有规定的除外：

（一）主张法律关系存在的当事人，应当对产生该法律关系的基本事实承担举证证明责任；

（二）主张法律关系变更、消灭或者权利受到妨害的当事人，应当对该法律关系变更、消灭或者权利受到妨害的基本事实承担举证证明责任。

**Article 91** The people's court shall determine the assumption of the burden of proof on the following principles, unless **otherwise provided by the law:** 1. the party claiming any legal relation shall assume the burden of proof for basic facts generating the said legal relation; and

2. the party claiming a change or elimination of any legal relation or an impairment of any right shall assume the burden of proof for basic facts of the change or elimination of the legal relation or impairment of the right.

**第九十二条** 一方当事人在法庭审理中，或者在起诉状、答辩状、代理词等书面材料中，对于已不利的事实明确表示承认的，另一

**Article 92** Where one party definitely admits any fact unfavorable thereto during trial or in any written materials such as the statement of claim, statement of defense or statement of attorney, the other party does not need to assume the burden of proof. The provision on self-admission in the preceding paragraph shall not apply to any facts involving

方当事人无需举证证明。

对于涉及身份关系、国家利益、社会公共利益等应当由人民法院依职权调查的事实，不适用前款自认的规定。

自认的事实与查明的事实不符的，人民法院不予确认。

identity relationship, national interests and public interests which shall be investigated by the people's court ex officio.

Where a self-confessed fact is inconsistent with an investigated fact, the people's court will not confirm the self-confessed fact.

**第九十三条** 下列事实，当事人无须举证证明：

（一）自然规律以及定理、定律；

（二）众所周知的事实；

（三）根据法律规定推定的事实；

（四）根据已知的事实和日常生活经验法则推定出的另一事实；

（五）已为人民法院发生法律效力裁判所确认的事实；

（六）已为仲裁机构生效裁决所

**Article 93 A party is not required to assume the burden of proof for the following facts:** 1. natural laws, theorems and laws;

2. facts that are known by all people;

3. facts that are induced as per legal provisions;

4. other facts that are induced as per known facts and routine experience and principles;

5. facts that have been affirmed in the judgment of the people's court that has taken effect;

6. facts that have been affirmed in the award of an arbitration agency that has taken effect; or

7. facts that have been proved in valid notarial documents.

Facts set out in Items 2 to 4 of the preceding paragraph shall be excluded if any party has enough contrary evidence to contradict them; and, facts set out in Items 5 to 7 of the preceding paragraph shall be excluded if any party has enough contrary evidence to overturn them.

确认的事实；

（七）已为有效公证文书所证明的事实。

前款第二项至第四项规定的事实，当事人有相反证据足以反驳的除外；第五项至第七项规定的事实，当事人有相反证据足以推翻的除外。

**第九十四条** 民事诉讼法第六十七条第二款规定的当事人及其诉讼代理人因客观原因不能自行收集的证据包括：

（一）证据由国家有关部门保存，当事人及其诉讼代理人无权查阅调取的；

（二）涉及国家秘密、商业秘密或者个人隐私的；

（三）当事人及其诉讼代理人因客观原因不能自行收集的其他证据。

当事人及其诉讼代理人因客观

**Article 94 Evidence unable to be collected by a party and the agent ad litem thereof themselves for reasons beyond their control as provided for in Paragraph 2 of Article 67 of the Civil Procedure Law includes:** 1. evidence that is kept by the relevant national departments and the party and the agent ad litem thereof have no right to consult or take possession of;

2. evidence involving state secrets, trade secrets or individual privacy; and

3. other evidence that the party and the agent ad litem thereof are unable to collect themselves for reasons beyond their control.

The party and the agent ad litem thereof may apply in writing to the people's court for investigation and collection of evidence that is unable to be collected by themselves for reasons beyond their control before expiration of the period for adducing evidence.

原因不能自行收集的证据，可以在举证期限届满前书面申请人民法院调查收集。

**第九十五条** 当事人申请调查收集的证据，与待证事实无关联、对证明待证事实无意义或者其他无调查收集必要的，人民法院不予准许。

**Article 95** Where any evidence under the application of a party for investigation and collection which is irrelative to any fact to be proved, is insignificant for proving any fact to be proved or is unnecessary to be investigated or collected for any other reason, the people's court shall not allow the application.

**第九十六条** 民事诉讼法第六十七条第二款规定的人民法院认为审理案件需要的证据包括：

（一）涉及可能损害国家利益、社会公共利益的；

（二）涉及身份关系的；

（三）涉及民事诉讼法第五十八条规定诉讼的；

（四）当事人有恶意串通损害他人合法权益可能的；

（五）涉及依职权追加当事人、中止诉讼、终结诉讼、回避等程序性事项的。

**Article 96** Evidence that the people's court deems necessary for the trial of a case as provided for in Paragraph 2 of Article 67 of the Civil Procedure Law includes: 1. evidence probably damaging national interests or public interests;

2. evidence involving identity relationships;

3. evidence involving proceedings as provided for in Article 55 of the Civil Procedure Law;

4. evidence that there is probably malicious collusion of the parties to damage the legitimate rights and interests of others; and

5 evidence involving procedural matters such as ex-officio addition to the parties, suspension of a lawsuit, termination of a lawsuit and recusal.

Except for the provisions specified in the preceding paragraph, the investigation and collection of evidence by the people's court shall be conducted as per the application of a party.

最高人民法院关于适用《中华人民共和国民事诉讼法》的解释（2022 修正）

除前款规定外，人民法院调查收集证据，应当依照当事人的申请进行。

**第九十七条** 人民法院调查收集证据，应当由两人以上共同进行。调查材料要由调查人、被调查人、记录人签名、捺印或者盖章。

**第九十八条** 当事人根据民事诉讼法第八十四条第一款规定申请证据保全的，可以在举证期限届满前书面提出。

证据保全可能对他人造成损失的，人民法院应当责令申请人提供相应的担保。

**第九十九条** 人民法院应当在审理前的准备阶段确定当事人的举证期限。举证期限可以由当事人协商，并经人民法院准许。

人民法院确定举证期限，第一审普通程序案件不得少于十五日，当事人提供新的证据的第二审案件不得少于十日。

**Article 97** For collection and investigation of evidence, the people's court shall assign two or more officers thereof. The investigation documents shall bear the signatures, fingerprints or seals of investigators, persons under investigation and the note-taker.

**Article 98** To apply for evidence preservation in accordance with Paragraph 1 of Article 84 of the Civil Procedure Law, a party may make an application in writing before expiration of the period for adducing evidence. Where evidence preservation may incur losses to others, the people's court shall order the applicant to provide a corresponding guarantee.

**Article 99** The people's court shall determine the period for adducing the evidence by any party in the preparation period before trial. The period for adducing evidence may be negotiated by the parties and is subject to the permission by the people's court. The period for adducing evidence determined by the people's court for a case of ordinary procedure of first instance shall not be less than 15 days, while that for a case of second instance for a party to provide new evidence shall not be less than ten days.

After expiration of the period for adducing evidence, where a party applies for the provision of rebuttal evidence or correction of defects in respect of an evidence source, form or others for provided evidence, the people's court may determine the period for

举证期限届满后，当事人对已经提供的证据，申请提供反驳证据或者对证据来源、形式等方面的瑕疵进行补正的，人民法院可以酌情再次确定举证期限，该期限不受前款规定的限制。

adducing evidence again at its discretion, which is not subject to the restrictions set out in the preceding paragraph.

**第一百条** 当事人申请延长举证期限的，应当在举证期限届满前向人民法院提出书面申请。

申请理由成立的，人民法院应当准许，适当延长举证期限，并通知其他当事人。延长的举证期限适用于其他当事人。

申请理由不成立的，人民法院不予准许，并通知申请人。

**Article 100** To apply for extension of the period for adducing evidence, a party shall make an application in writing to the people's court before expiration of the said period. If the application reason is tenable, the people's court shall permit a proper extension of the period for adducing evidence and inform the other party. The extension of the period for adducing evidence shall apply to the other party.

If the application reason is untenable, the people's court shall not permit the application, and inform the applicant.

**第一百零一条** 当事人逾期提供证据的，人民法院应当责令其说明理由，必要时可以要求其提供相应的证据。

当事人因客观原因逾期提供证据，或者对方当事人对逾期提供证据未提出异议的，视为未逾期。

**Article 101** Where a party provides evidence beyond the time limit, the people's court shall order it to explain the reasons therefor and require it to provide corresponding evidence when necessary. Where a party provides evidence beyond the time limit for any objective reason, or the other party does not object to the provision of evidence beyond the time limit, such evidence shall not be deemed overdue.



**第一百零二条** 当事人因故意

或者重大过失逾期提供的证据，人民法院不予采纳。但该证据与案件基本事实有关的，人民法院应当采纳，并依照民事诉讼法第六十八条、第一百一十八条第一款的规定予以训诫、罚款。

当事人非因故意或者重大过失逾期提供的证据，人民法院应当采纳，并对当事人予以训诫。

当事人一方要求另一方赔偿因逾期提供证据致使其增加的交通、住宿、就餐、误工、证人出庭作证等必要费用的，人民法院可予支持。

**第一百零三条** 证据应当在法

庭上出示，由当事人互相质证。未经当事人质证的证据，不得作为认定案件事实的根据。

当事人在审理前的准备阶段认可的证据，经审判人员在庭审中说明后，视为质证过的证据。

**Article 102** Where a party provides evidence beyond the time limit intentionally or due to gross negligence, the people's court shall not adopt such evidence. However, if the evidence is related to the basic facts of the case, the people's court shall adopt it, and admonish and fine the party in accordance with Article 68 and Paragraph 1 of Article 118 of the Civil Procedure Law. Where a party provides evidence beyond the time limit for reasons other than intentional or gross negligence, the people's court shall adopt such evidence and admonish the party.

Where one party requests the other party to compensate for the necessary expenses such as transportation, accommodation, meals, loss of working hours and witness testimony due to the late provision of evidence, the people's court may support such request.

**Article 103** Evidence shall be presented in court and cross-examined by the parties. Evidence not cross-examined by the parties shall not be taken as the basis for ascertaining the facts of the case. The evidence admitted by the parties in the preparation period before trial shall be deemed to have been cross-examined after the judices make an explanation in the court trial.

The evidence involving any national secret, trade secret or individual privacy or that which shall be kept confidential in accordance with legal provisions shall not be cross-examined publicly.

涉及国家秘密、商业秘密、个人隐私或者法律规定应当保密的证据，不得公开质证。

**第一百零四条** 人民法院应当组织当事人围绕证据的真实性、合法性以及有待证事实的关联性进行质证，并针对证据有无证明力和证明力大小进行说明和辩论。

能够反映案件真实情况、与待证事实相关联、来源和形式符合法律规定的证据，应当作为认定案件事实的根据。

**第一百零五条** 人民法院应当按照法定程序，全面、客观地审核证据，依照法律规定，运用逻辑推理和日常生活经验法则，对证据有无证明力和证明力大小进行判断，并公开判断的理由和结果。

**第一百零六条** 对以严重侵害他人合法权益、违反法律禁止性规定或者严重违背公序良俗的方法形成或者获取的证据，不得作为认定案件事实的根据。

**Article 104** The people's court shall organize the parties to cross-examine the authenticity and legitimacy of the evidence as well as its relevance to the facts to be proved and explain and debate the probative force of the evidence and the extent of the probative force thereof. Evidence that can reflect the actual situation of a case, relate to the facts to be proved, and whose source and form comply with the provisions of the law shall serve as the basis for ascertaining the facts of the case.

**Article 105** The people's court shall fully and objectively review the evidence according to legal procedures and apply logical deduction and routine experience and principles to judge whether the evidence is probative as well as how large the probative force is in accordance with legal provisions, and announce judgment reasons and results.

**Article 106** Any evidence formed or obtained in a way that seriously infringes upon the legitimate rights and interests of others, violates prohibitive provisions of the law or seriously goes against public order and good custom shall not be taken as the basis for ascertaining the facts of a case.

**第一百零七条** 在诉讼中，当事人为达成调解协议或者和解协议作出妥协而认可的事实，不得在后续的诉讼中作为对其不利的根据，但法律另有规定或者当事人均同意的除外。

**Article 107** In litigation, the facts admitted by a party for the purpose of entering into a mediation agreement or reconciliation agreement shall not be taken as a basis unfavorable to the said party in subsequent litigation, unless otherwise provided by the law or consented by all parties.

**第一百零八条** 对负有举证证明责任的当事人提供的证据，人民法院经审查并结合相关事实，确信待证事实的存在具有高度可能性的，应当认定该事实存在。

**Article 108** With regard to the evidence provided by the party with the burden of proof, where the people's court believes that the existence of a fact to be proved is highly probable upon examination and in light of the relevant facts, it shall affirm the existence of the said fact. With regard to the evidence provided by a party to contradict the facts claimed by the other party with the burden of proof, where the people's court believes that a fact to be provided is unclear upon examination and in light of the relevant facts, it shall affirm that the said fact does not exist.

对一方当事人为反驳负有举证证明责任的当事人所主张事实而提供的证据，人民法院经审查并结合相关事实，认为待证事实真伪不明的，应当认定该事实不存在。

Where any law has any other provision on standards of proof for facts to be proved, such provision shall prevail.

法律对于待证事实所应达到的证明标准另有规定的，从其规定。

**第一百零九条** 当事人对欺诈、胁迫、恶意串通事实的证明，以及对口头遗嘱或者赠与事实的证明，人民法院确信该待证事实存在的可能性能够排除合理怀疑的，应

**Article 109** With regard to the proof of a party regarding a fact of fraud, force, malicious collusion, oral will or gift, where the people's court believes that the possibility of existence of the facts to be proved is able to eliminate reasonable doubt, it shall affirm the existence of such facts.

当认定该事实存在。

**第一百一十条** 人民法院认为有必要的，可以要求当事人本人到庭，就案件有关事实接受询问。在询问当事人之前，可以要求其签署保证书。

保证书应当载明据实陈述、如有虚假陈述愿意接受处罚等内容。当事人应当在保证书上签名或者捺印。

负有举证证明责任的当事人拒绝到庭、拒绝接受询问或者拒绝签署保证书，待证事实又欠缺其他证据证明的，人民法院对其主张的事实不予认定。

**Article 110** The people's court may, when it deems necessary, require a party to appear in court in person and receive inquiries about the relevant the facts of the case. Before inquiry of the party, the people's court may require him/her to sign a guarantee. The guarantee shall include content such as truthful statement and willingness to receive punishment in the case of any false statement. The party shall affix his/her signature or fingerprint to the guarantee.

Where the party with the burden of proof refuses to appear in court, receive inquiries or sign a guarantee, and there is no other evidence to prove a fact to be proved, the people's court shall not affirm the said fact claimed by the party.

**第一百一十一条** 民事诉讼法第七十三条规定的提交书证原件确有困难，包括下列情形：

（一）书证原件遗失、灭失或者毁损的；

（二）原件在对方当事人控制之下，经合法通知提交而拒不提交

**Article 111** The circumstances under which it is indeed difficult to provide originals of documentary evidence specified in Article 73 of the Civil procedure law include the following: 1. the original of document evidence has been lost, destroyed or damaged;

2. the original is under the control of the other party that refuses to submit the original after being lawfully requested to do so;

3. the original is under the control of any other person with the right not to submit the original;

的；

4. it is inconvenient to submit the original due to its large length or volume; and

（三）原件在他人控制之下，  
而其有权不提交的；

5. the party with the burden of proof cannot obtain the original of documentary evidence through application to the people's court for investigation and collection or otherwise.

（四）原件因篇幅或者体积过  
大而不便提交的；

In any of the circumstances specified in the preceding paragraph, the people's court shall examine and judge whether the copy of documentary evidence can be accepted as the basis for affirming the facts of the case in light of other evidence and concrete case conditions.

（五）承担举证证明责任的当  
事人通过申请人民法院调查收集或  
者其他方式无法获得书证原件的。

前款规定情形，人民法院应当  
结合其他证据和案件具体情况，审  
查判断书证复制品等能否作为认定  
案件事实的根据。

**第一百一十二条** 书证在对方  
当事人控制之下的，承担举证证明  
责任的当事人可以在举证期限届满  
前书面申请人民法院责令对方当事人  
提交。

申请理由成立的，人民法院应  
当责令对方当事人提交，因提交书  
证所产生的费用，由申请人负担。  
对方当事人无正当理由拒不提交的，  
人民法院可以认定申请人所主

**Article 112** Where the documentary evidence is under the control of the other party, the party with the burden of proof may apply to the people's court in writing before the expiration of the period for adducing evidence to order the other party to submit such documentary evidence. Where the application reason is tenable, the people's court shall order the other party to submit the documentary evidence, with the expenses arising from submission of the documentary evidence to be borne by the applicant. Where the other party refuses to submit the documentary evidence for no proper reason, the people's court may affirm that the content of the documentary evidence claimed by the applicant is true.

张的书证内容为真实。

**第一百一十三条** 持有书证的当事人以妨碍对方当事人使用为目的，毁灭有关书证或者实施其他致使书证不能使用行为的，人民法院可以依照民事诉讼法第一百一十四条规定，对其处以罚款、拘留。

**第一百一十四条** 国家机关或者其他依法具有社会管理职能的组织，在其职权范围内制作的文书所记载的事项推定为真实，但有相反证据足以推翻的除外。必要时，人民法院可以要求制作文书的机关或者组织对文书的真实性予以说明。

**第一百一十五条** 单位向人民法院提出的证明材料，应当由单位负责人及制作证明材料的人员签名或者盖章，并加盖单位印章。人民法院就单位出具的证明材料，可以向单位及制作证明材料的人员进行调查核实。必要时，可以要求制作证明材料的人员出庭作证。

单位及制作证明材料的人员拒

**Article 113** Where the party holding documentary evidence destroys the relevant documentary evidence or commits any other act making the documentary evidence unable to be used for the purpose of hindering the use of the documentary evidence by the other party, the people's court may fine and detain the party in accordance with Article 114 of the Civil Procedure Law.

**Article 114** Matters recorded in instruments prepared by national organs or other organizations with lawful social management functions ex officio shall be deemed true, unless there is sufficient contrary evidence to overturn them. When necessary, the people's court may require the organ or organization preparing the relevant instrument to explain the authenticity of the instrument.

**Article 115** Supporting documents provided by an entity to the people's court shall be affixed with signatures or seals of the principal of the entity and person preparing such materials as well as the seal of the entity. The people's court may investigate the entity and the person preparing supporting documents issued by the entity to verify such materials. When necessary, the people's court may require the person preparing supporting documents to appear in court as a witness. Where the entity and the person preparing the certification evidence refuse the investigation and verification by the people's court, or the person preparing the supporting documents refuses to appear in court as a witness for no proper reason, such supporting documents shall not be deemed the basis for affirming the facts of the case.

绝人民法院调查核实，或者制作证明材料的人员无正当理由拒绝出庭作证的，该证明材料不得作为认定案件事实的根据。

**第一百一十六条** 视听资料包括录音资料和影像资料。

电子数据是指通过电子邮件、电子数据交换、网上聊天记录、博客、微博客、手机短信、电子签名、域名等形成或者存储在电子介质中的信息。

存储在电子介质中的录音资料和影像资料，适用电子数据的规定。

**Article 116 Audio-visual materials include audio materials and video materials.** Electronic data refer to the information formed or stored in electronic media in the form of e-mails, electronic data interchange, online chatting records, blogs, microblogs, short messages, electronic signatures and domain names.

Provisions on electronic data shall apply to audio materials and video materials stored in electronic media.

**第一百一十七条** 当事人申请证人出庭作证的，应当在举证期限届满前提出。

符合本解释第九十六条第一款规定情形的，人民法院可以依职权通知证人出庭作证。

未经人民法院通知，证人不得出庭作证，但双方当事人同意并经

**Article 117 To apply for a witness to give testimony in court, a party shall make an application before expiration of the period for adducing evidence.** In a circumstance specified in Paragraph 1 of Article 96 of this Interpretation, the people's court may notify ex officio a witness to give testimony in court.

Without a notice from the people's court, a witness shall not give testimony in court, unless otherwise approved by both parties and permitted by the people's court.



人民法院准许的除外。

**第一百一十八条** 民事诉讼法第七十七条规定的证人因履行出庭作证义务而支出的交通、住宿、就餐等必要费用，按照机关事业单位工作人员差旅费用和补贴标准计算；误工损失按照国家上年度职工日平均工资标准计算。

人民法院准许证人出庭作证申请的，应当通知申请人预缴证人出庭作证费用。

**Article 118** The necessary costs and expenses incurred to a witness in connection with the fulfilment of an obligation to give testimony in court, including for transport, accommodation and meals, as provided for in Article 77 of the Civil Procedure Law, shall be calculated as per the standards for travel expenses and subsidies of workers of organs and public institutions; loss of salary or wages shall be calculated as per the standard for the average daily salary of workers of the State in the preceding year. Where the people's court permits the application for a witness to give testimony in court, it shall notify the applicant to pay expenses for the witness to give testimony in court in advance.

**第一百一十九条** 人民法院在证人出庭作证前应当告知其如实作证的义务以及作伪证的法律后果，并责令其签署保证书，但无民事行为能力人和限制民事行为能力人除外。

证人签署保证书适用本解释关于当事人签署保证书的规定。

**Article 119** Before a witness gives testimony in court, the people's court shall inform the witness of the obligation to give truthful testimony as well as the legal consequences of giving false testimony, and order him to sign a guarantee, except for any person without the capacity for civil conduct and any person with limited capacity for civil conduct . Provisions on the signature on a guarantee by a party shall apply to the signature on a guarantee by a witness.

**第一百二十条** 证人拒绝签署保证书的，不得作证，并自行承担相关费用。

**Article 120** Where a witness refuses to sign a guarantee, he/she shall not give testimony but shall undertake the relevant expenses by himself/herself.

**第一百二十一条** 当事人申请鉴定，可以在举证期限届满前提出。申请鉴定的事项与待证事实无关联，或者对证明待证事实无意义的，人民法院不予准许。

人民法院准许当事人鉴定申请的，应当组织双方当事人协商确定具备相应资格的鉴定人。当事人协商不成的，由人民法院指定。

符合依职权调查收集证据条件的，人民法院应当依职权委托鉴定，在询问当事人的意见后，指定具备相应资格的鉴定人。

**第一百二十二条** 当事人可以依照民事诉讼法第八十二条的规定，在举证期限届满前申请一至二名具有专门知识的人出庭，代表当事人对鉴定意见进行质证，或者对案件事实所涉及的专业问题提出意见。

具有专门知识的人在法庭上就专业问题提出的意见，视为当事人

**Article 121** To apply for examination by experts, a party may make an application before the expiration of the period for adducing evidence. If a matter under the application for examination by experts is irrelevant to a fact to be proved or is insignificant with regard to proving a fact to be proved, the people's court shall not permit the application. Where the people's court permits the application of a party for examination by experts, it shall organize both parties to appoint a qualified expert upon negotiation. If negotiation fails, the people's court shall designate an expert.

Where conditions for ex-officio investigation and collection of evidence are met, the people's court shall entrust expert examination ex officio, and designate a qualified expert after seeking the opinions of both parties.

**Article 122** A party may, in accordance with Article 82 of the Civil Procedure Law, apply, before expiration of the period for adducing evidence, for one to two persons with specialized expertise to appear in court to cross-examine expert opinions on their behalf, or issue opinions on the specialized issues involved in the facts of the case. Opinions issued by persons with specialized expertise on specialized issues in court shall be deemed statements of the party.

Where the people's court permits the application of the party, the relevant expenses shall be undertaken by the party making the application.

的陈述。

人民法院准许当事人申请的，  
相关费用由提出申请的当事人负担。

**第一百二十三条** 人民法院可以对出庭的具有专门知识的人进行询问。经法庭准许，当事人可以对出庭的具有专门知识的人进行询问，当事人各自申请的具有专门知识的人可以就案件中的有关问题进行对质。

具有专门知识的人不得参与专业问题之外的法庭审理活动。

**第一百二十四条** 人民法院认为有必要的，可以根据当事人的申请或者依职权对物证或者现场进行勘验。勘验时应当保护他人的隐私和尊严。

人民法院可以要求鉴定人参与勘验。必要时，可以要求鉴定人在勘验中进行鉴定。

**Article 123** The people's court may question persons with specialized expertise in court. Upon permission by the court, the parties may question persons with specialized expertise in court, and persons with specialized expertise applied for by the parties respectively may confront each other concerning the relevant issues involved in a case. Persons with specialized expertise shall not participate in trial activities other than specialized issues.

**Article 124** Where the people's court deems it necessary, it may inspect any physical evidence or scene on the request of a party or ex officio. The privacy and respect of others shall be protected during an inspection. The people's court may require an expert to participate in an inspection. When necessary, it may require an expert to conduct an examination during an inspection.

## 五、期间和送达

## Chapter V Periods and Service

最高人民法院关于适用《中华人民共和国民事诉讼法》的解释（2022 修正）

**第一百二十五条** 依照民事诉讼法第八十五条第二款规定，民事诉讼中以时起算的期间从次时起算；以日、月、年计算的期间从次日起算。

**Article 125** According to Paragraph 2 of Article 85 of the Civil Procedure Law, all the time periods counted in hour in civil proceedings shall start from the next hour; the time periods calculated in day, month and year shall start from the next day.

**第一百二十六条** 民事诉讼法第一百二十六条规定的立案期限，因起诉状内容欠缺通知原告补正的，从补正后交人民法院的次日起算。由上级人民法院转交下级人民法院立案的案件，从受诉人民法院收到起诉状的次日起算。

**Article 126** For the time period for placing the case on the docket as provided for in Article 126 of the Civil Procedure Law, where the statement of claim is not complete and the plaintiff is requested to supplement it, the said time period shall start from the next day after the plaintiff has supplemented the statement of claim. Where a case is transferred from a superior people's court to a lower people's court, the said time period shall start from the next day after the people's court with which the lawsuit is filed has received the statement of claim.

**第一百二十七条** 民事诉讼法第五十九条第三款、第二百一十二条以及本解释第三百七十二、三百八十二、三百九十九、第四百二十、第四百二十一条规定的六个月，民事诉讼法第二百三十条规定的一年，为不变期间，不适用诉讼时效中止、中断、延长的规定。

**Article 127** Six months as provided for in Paragraph 3 of Article 59 and Article 212 of the Civil Procedure Law as well as Articles 372, 382, 399, 420 and 421 of this Interpretation, and one year as provided for in Article 230 of the Civil Procedure Law shall be fixed periods, and shall not be subject to provisions on suspension, halt and extension of the limitation of action.

**第一百二十八条** 再审案件按照第一审程序或者第二审程序审理

**Article 128** Where a retrial case is tried under the procedure of first instance or the procedure of second instance, the trial period as provided for in Articles 152 and 183 of the Civil Procedure Law shall apply. The trial period starts from the

的，适用民事诉讼法第一百五十二条、第一百八十三条规定的审限。审限自再审立案的次日起算。

**next day after placing the retrial case on the docket.**

**第一百二十九条** 对申请再审案件，人民法院应当自受理之日起三个月内审查完毕，但公告期间、当事人和解期间等不计入审查期限。有特殊情况需要延长的，由本院院长批准。

**Article 129** The people's court shall complete the trial of a retrial case within three months after accepting it, which does not include the announcement period, period of reconciliation for the parties. Where the period needs to be extended in special circumstances, the extension shall be approved by the president of the people's court.

**第一百三十条** 向法人或者其他组织送达诉讼文书，应当由法人的法定代表人、该组织的主要负责人或者办公室、收发室、值班室等负责收件的人签收或者盖章，拒绝签收或者盖章的，适用留置送达。

**Article 130** For the service of litigation documents on a legal person or other organization, the legal representative of the legal person or the main person in charge of the organization or the person in the office, mail room or janitor's room responsible for receipt of mails shall sign for litigation documents or affix seals; otherwise, service by leaving the rejected legal document at the place of abode shall be applied. The representatives of the relevant basic-level organization or the unit of the recipient as provided for in Article 86 of the Civil Procedure Law may be a staff member of the neighborhood committee or villagers' committee at the domicile of the recipient and a staff member of the recipient's employer.

民事诉讼法第八十九条规定的有关基层组织和所在单位的代表，可以是受送达人住所地的居民委员会、村民委员会的工作人员以及受送达人所在单位的工作人员。

**第一百三十一条** 人民法院直接送达诉讼文书的，可以通知当事人到人民法院领取。当事人到达人

**Article 131** Where the people's court directly serves a litigation document, it may notify the party to collect the document at the people's court. Where the party arrives at the people's court but refuses to sign a receipt of service, the

民法院，拒绝签署送达回证的，视为送达。审判人员、书记员应当在送达回证上注明送达情况并签名。

人民法院可以在当事人住所地以外向当事人直接送达诉讼文书。当事人拒绝签署送达回证的，采用拍照、录像等方式记录送达过程即视为送达。审判人员、书记员应当在送达回证上注明送达情况并签名。

**document shall be deemed as having been served. A judge and clerk shall indicate service conditions on the receipt of service, with their signatures affixed thereto.** The people's court may directly serve a litigation document on the party at a place other than the domicile of the party. If the party refuses to sign a receipt of service, the document shall be deemed as having been served if the service process is recorded by means of photographing, video recording or otherwise. The judge and clerk shall indicate service conditions on the receipt of service, with their signatures affixed thereto.

**第一百三十二条** 受送达人有诉讼代理人的，人民法院既可以向受送达人送达，也可以向其诉讼代理人送达。受送达人指定诉讼代理人为代收人的，向诉讼代理人送达时，适用留置送达。

**Article 132** Where a recipient has an agent ad litem, the people's court may serve a legal document either on the recipient or on the agent ad litem thereof. Where the recipient has designated the agent ad litem thereof for receipt of legal documents, service by leaving legal documents at the place of abode may be applied in the case of service of a legal document on the agent ad litem.

**第一百三十三条** 调解书应当直接送达当事人本人，不适用留置送达。当事人本人因故不能签收的，可由其指定的代收人签收。

**Article 133** A mediation statement shall be served directly on the party in person, and the service by leaving legal documents at the place of abode shall not be applied. Where the party is unable to sign for the receipt by himself/herself for any reason, he/she may designate an agent to do so.

**第一百三十四条** 依照民事诉讼法第九十一条规定，委托其他人民法院代为送达的，委托法院应当

**Article 134** Where a legal document is served by an entrusted people's court in accordance with Article 91 of the Civil Procedure Law, the entrusting people's court shall issue a power of attorney and attach the litigation document for

出具委托函，并附需要送达的诉讼文书和送达回证，以受送达人在送达回证上签收的日期为送达日期。

委托送达的，受委托人民法院应当自收到委托函及相关诉讼文书之日起十日内代为送达。

**service and receipt of service, and the date stated by the recipient on the receipt of service shall be the date of service.** In the case of entrusted service, the entrusted people's court shall serve the relevant litigation document within ten days after receiving the power of attorney and the relevant litigation document.

**第一百三十五条** 电子送达可以采用传真、电子邮件、移动通信等即时收悉的特定系统作为送达媒介。

民事诉讼法第九十条第二款规定的到达受送达人特定系统的日期，为人民法院对应系统显示发送成功的日期，但受送达人证明到达其特定系统的日期与人民法院对应系统显示发送成功的日期不一致的，以受送达人证明到达其特定系统的日期为准。

**Article 135 Special systems of instant receipt such as fax, e-mail or mobile communication may be accepted as service media for electronic service.** The date when the document reaches the special system of the recipient as provided for in Paragraph 2 of Article 90 of the Civil Procedure Law shall be the date when the corresponding system of the people's court indicates successful service. Where the recipient proves that the date when the document reaches the special system thereof is inconsistent with the date when the corresponding system of the people's court indicates successful service, the date when the document reaches the special system of the recipient as proved by the recipient shall prevail.

**第一百三十六条** 受送达人同意采用电子方式送达的，应当在送达地址确认书中予以确认。

**Article 136 Where the recipient agrees about the electronic service, he/she shall confirm this in the letter of confirmation of service address.**

**第一百三十七条** 当事人在提

**Article 137 Where the party does not change the service address in writing during institution of an appeal, application**



起上诉、申请再审、申请执行时未书面变更送达地址的，其在第一审程序中确认的送达地址可以作为第二审程序、审判监督程序、执行程序的送达地址。

**for retrial and application for enforcement, the service address confirmed thereby during the procedure of first instance can be deemed the service address of the procedure of second instance, procedure for trial supervision and enforcement procedure.**

**第一百三十八条** 公告送达可以在法院的公告栏和受送达人住所地张贴公告，也可以在报纸、信息网络等媒体上刊登公告，发出公告日期以最后张贴或者刊登的日期为准。对公告送达方式有特殊要求的，应当按要求的方式进行。公告期满，即视为送达。

**Article 138** For service by public notice, a public notice may be posted on the bulletin board of the relevant court or at the domicile of the recipient or in a newspaper, information network or other media. The date of issue of a public notice shall be the final date of posting or publication. Where there are special requirements for the service by public notice, a public notice shall be published in the required manner. The public notice will be deemed to have been served at the expiration of the period. Where the people's court posts a public notice at the domicile of the recipient, it shall record the process of posting by means of photographing, video recording or otherwise.

人民法院在受送达人住所地张贴公告的，应当采取拍照、录像等方式记录张贴过程。

**第一百三十九条** 公告送达应当说明公告送达的原因；公告送达起诉状或者上诉状副本的，应当说明起诉或者上诉要点，受送达人答辩期限及逾期不答辩的法律后果；公告送达传票，应当说明出庭的时间和地点及逾期不出庭的法律后

**Article 139** In the case of service by public notice, the people's court shall indicate the reason therefor. For the service of a copy of a statement of claim or a petition for appeal by public notice, the people's court shall indicate the key points of claim or appeal, the period for the recipient to file a defense as well as the legal consequences if the recipient fails to file a defense within the stipulated period. For service of a summons by public notice, the people's court shall indicate the place and time for court appearance as well as the legal consequences should the recipient fail to appear in court at the designated place and time. For service of a judgment or

果；公告送达判决书、裁定书的，应当说明裁判主要内容，当事人有权上诉的，还应当说明上诉权利、上诉期限和上诉的人民法院。

**ruling by public notice, the people's court shall indicate the main adjudication items, as well as the right to appeal, the time limit for appeal and the appellate people's court if the party has the right to appeal.**

**第一百四十条** 适用简易程序的案件，不适用公告送达。

**Article 140 Service by public notice shall not apply to a case to which the summary procedure applies.**

**第一百四十一条** 人民法院在定期宣判时，当事人拒不签收判决书、裁定书的，应视为送达，并在宣判笔录中记明。

**Article 141 Where the party refuses to sign for a judgment or ruling when the people's court pronounces the judgment or ruling at a fixed time, the service shall be considered completed, and the circumstances shall be indicated in the transcripts of pronouncement.**

## 六、调解

## Chapter VI Mediation

**第一百四十二条** 人民法院受理案件后，经审查，认为法律关系明确、事实清楚，在征得当事人双方同意后，可以径行调解。

**Article 142 Where, after acceptance of a case, the people's court deems upon examination that the legal relationship is explicit and facts are clear, it can directly conduct mediation after having solicited the consent of both parties.**

**第一百四十三条** 适用特别程序、督促程序、公示催告程序的案件，婚姻等身份关系确认案件以及其他根据案件性质不能进行调解的案件，不得调解。

**Article 143 Cases to which the special procedure, procedure for the recovery of debts or procedure for public invitation to assert claims applies, cases concerning confirmation of identity relationships including marital relationships as well as other cases which cannot be mediated according to the case nature shall not be mediated.**

**第一百四十四条** 人民法院审理民事案件，发现当事人之间恶意

**Article 144 Where the people's court finds that the parties have maliciously colluded in order to infringe the legitimate rights and interests of others by way of reconciliation and**

串通，企图通过和解、调解方式侵害他人合法权益的，应当依照民事诉讼法第一百一十五条的规定处理。

**mediation in hearing a civil case, it shall handle the case in accordance with Article 115 of the Civil Procedure Law.**

**第一百四十五条** 人民法院审理民事案件，应当根据自愿、合法的原则进行调解。当事人一方或者双方坚持不愿调解的，应当及时裁判。

**Article 145** When the people's court hears civil cases, it shall conduct mediation on the principles of free will and legality. **Where either party or both parties are unwilling to conduct mediation, the people's court shall render the judgment in a timely manner.** The people's court shall conduct mediation when hearing a divorce case but shall not conduct long-term mediation with no decisive results.

人民法院审理离婚案件，应当进行调解，但不应久调不决。

**第一百四十六条** 人民法院审理民事案件，调解过程不公开，但当事人同意公开的除外。

**Article 146** Where the people's court hears a civil case, the mediation process shall not be conducted publicly, unless otherwise consented by the parties. The content of a mediation agreement shall not be published, unless it is deemed really necessary by the people's court to publish them in a bid to protect national interests, public interests as well as the legitimate rights and interests of others.

调解协议内容不公开，但为保护国家利益、社会公共利益、他人合法权益，人民法院认为确有必要的公开的除外。

Persons presiding over mediation and participating in mediation shall keep confidential the mediation process and state secrets, trade secrets, individual privacy and other information unsuitable to be published in the mediation process, unless otherwise necessary for protecting national interests, public interests, and the legitimate rights and interests of others.

主持调解以及参与调解的人员，对调解过程以及调解过程中获悉的国家秘密、商业秘密、个人隐私和其他不宜公开的信息，应当保

守秘密，但为保护国家利益、社会公共利益、他人合法权益的除外。

**第一百四十七条** 人民法院调解案件时，当事人不能出庭的，经其特别授权，可由其委托代理人参加调解，达成的调解协议，可由委托代理人签名。

离婚案件当事人确因特殊情况无法出庭参加调解的，除本人不能表达意志的以外，应当出具书面意见。

**第一百四十八条** 当事人自行和解或者调解达成协议后，请求人民法院按照和解协议或者调解协议的内容制作判决书的，人民法院不予准许。

无民事行为能力人的离婚案件，由其法定代理人进行诉讼。法定代理人对方达成协议要求发给判决书的，可根据协议内容制作判决书。

**第一百四十九条** 调解书需经

**Article 147** When the people's court mediates a case, where a party is unable to appear in court, upon special authorization, the agent authorized thereby may participate in mediation, and the mediation agreement as concluded may be signed by such authorized agent. Where one party in a divorce case cannot appear in court for mediation under a special circumstance, except that the party cannot express his/her ideas, the party shall present written opinions.

**Article 148** Where the parties request the people's court to prepare a judgment according to a reconciliation agreement or mediation agreement after they reach an agreement upon independent reconciliation or mediation, the people's court shall not permit the request. For a divorce case involving a person without capacity for civil conduct, his/her statutory agent shall institute legal proceedings. If the statutory agent reaches an agreement with the other party and requests a judgment, the people's court may prepare a judgment according to the content of the agreement.

**Article 149** If the legal effect of the mediation statement is required to be signed by the parties, the date of signature for

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当事人签收后才发生法律效力的，应当以最后收到调解书的当事人签收的日期为调解书生效日期。

**receipt by the party that last receives the mediation agreement shall be the effective date of the mediation statement.**

**第一百五十条** 人民法院调解民事案件，需由无独立请求权的第三人承担责任的，应当经其同意。该第三人在调解书送达前反悔的，人民法院应当及时裁判。

**Article 150** Where the people's court needs to impose an obligation on a third party without an independent claim at the time of mediation, it shall obtain the consent of the third party. If the third party goes back on its word in relation thereto before the mediation statement is served, the people's court shall render the judgment in a timely manner.

**第一百五十一条** 根据民事诉讼法第一百零一条第一款第四项规定，当事人各方同意在调解协议上签名或者盖章后即发生法律效力的，经人民法院审查确认后，应当记入笔录或者将调解协议附卷，并由当事人、审判人员、书记员签名或者盖章后即具有法律效力。

**Article 151** According to Item 4, Paragraph 1 of Article 98 of the Civil Procedure Law, where the mediation statement comes into force after all parties agree to affix their signatures or seals on the mediation statement, upon examination and confirmation by the people's court, this circumstance shall be set down in the written record or the mediation statement shall be attached to the file, and the mediation statement shall come into force immediately upon affixing of signatures or seals by the parties, judges and clerk. Where the parties request the preparation of a mediation statement under circumstance specified in the preceding paragraph, the people's court may prepare a mediation statement upon examination and confirmation and serve the same on the parties. Where a party rejects the mediation statement, the force of the mediation statement will not be affected.

前款规定情形，当事人请求制作调解书的，人民法院审查确认后，可以制作调解书送交当事人。当事人拒收调解书的，不影响调解协议的效力。

## 七、保全和先予执行

## Chapter VII Preservation and Prior Enforcement

**第一百五十二条** 人民法院依照民事诉讼法第一百零三条、第一百零四条规定，在采取诉前保全、诉讼保全措施时，责令利害关系人或者当事人提供担保的，应当书面通知。

利害关系人申请诉前保全的，应当提供担保。申请诉前财产保全的，应当提供相当于请求保全数额的担保；情况特殊的，人民法院可以酌情处理。申请诉前行为保全的，担保的数额由人民法院根据案件的具体情况决定。

在诉讼中，人民法院依申请或者依职权采取保全措施的，应当根据案件的具体情况，决定当事人是否应当提供担保以及担保的数额。

**第一百五十三条** 人民法院对季节性商品、鲜活、易腐烂变质以及其他不宜长期保存的物品采取保全措施时，可以责令当事人及时处理，由人民法院保存价款；必要时，人民法院可予以变卖，保存价

**Article 152** Where the people's court, in accordance with Articles 103 and 104 of the Civil Procedure Law, orders an interested party or a party to provide security when adopting any preservation measure before the institution of an action or during an action, the people's court shall send a written notice. Where an interested party applies for pre-litigation preservation, it shall provide security. Where an interested party applies for pre-action property preservation, the interested party shall provide security equivalent to the amount of the property under the preservation application; under special circumstances, the people's court may handle the case at its discretion. For an application for pre-litigation behavior preservation, the amount of security is decided by the people's court according to the specific circumstances of the case.

Where the people's court takes a preservation measure on request or ex officio, it shall decide whether the party shall provide security as well as what security amount the party shall provide in light of the specific conditions of the case.

**Article 153** When the people's court takes the preservation measure for seasonal goods, fresh or perishable goods, or other goods unsuitable for long-term preservation, it may order the party to timely dispose of the said goods and keep the money derived therefrom; and when necessary, the people's court may sell the said goods and keep the money derived therefrom.



款。

**第一百五十四条** 人民法院在财产保全中采取查封、扣押、冻结财产措施时，应当妥善保管被查封、扣押、冻结的财产。不宜由人民法院保管的，人民法院可以指定被保全人负责保管；不宜由被保全人保管的，可以委托他人或者申请保全人保管。

查封、扣押、冻结担保物权人占有的担保财产，一般由担保物权人保管；由人民法院保管的，质权、留置权不因采取保全措施而消灭。

**第一百五十五条** 由人民法院指定被保全人保管的财产，如果继续使用对该财产的价值无重大影响，可以允许被保全人继续使用；由人民法院保管或者委托他人、申请保全人保管的财产，人民法院和其他保管人不得使用。

**第一百五十六条** 人民法院采取财产保全的方法和措施，依照执

**Article 154** When the people's court takes the measures of seizure, detention or freezing of property in the course of property preservation, it shall properly keep the property as seized, detained or frozen. If the property is unsuitable to be kept by the people's court, the people's court may designate the person against whom the preservation is adopted to keep the property; where the property is unsuitable to be kept by the said person, the property may be kept by any other person entrusted or the person who applied for preservation. The secured property occupied by the holder of security interests as seized, detained or frozen is generally kept by the holder of security interests; where such property is kept by the people's court, pledge and lien shall not be eliminated due to the preservation measure taken.

**Article 155** If the continuous use of the property kept by the person against whom the preservation is adopted as designated by the people's court has no significant impact on the value of the said property, the said person may be allowed to continuously use the property; the people's court and any other keeper shall not use the property which is kept by the people's court or by others as entrusted or by the person who applied for preservation.

**Article 156** The people's court shall take property preservation methods and measures in accordance with the relevant provisions on the enforcement procedure.



行程序相关规定办理。

**第一百五十七条** 人民法院对抵押物、质押物、留置物可以采取财产保全措施，但不影响抵押权人、质权人、留置权人的优先受偿权。

**Article 157** The people's court may take the property preservation measure for an object subject to a mortgage, pledge or lien, but the priority of compensation of the mortgagee, pledgee or lienor shall not be affected.

**第一百五十八条** 人民法院对债务人到期应得的收益，可以采取财产保全措施，限制其支取，通知有关单位协助执行。

**Article 158** For proceeds due to the debtor, the people's court may take the property preservation measure and restrict the debtor from drawing the proceeds and notify the relevant entity to offer assistance in the enforcement.

**第一百五十九条** 债务人的财产不能满足保全请求，但对他人有到期债权的，人民法院可以依债权人的申请裁定该他人不得对本案债务人清偿。该他人要求偿付的，由人民法院提存财物或者价款。

**Article 159** Where the debtor's property is not sufficient for the request for property preservation but the debtor has mature claims to another person, the people's court may rule, upon application of the creditor, that such person shall not make any repayment to the debtor in the case in question. Where such person requests such repayment, the property or money shall be set aside by the people's court.

**第一百六十条** 当事人向采取诉前保全措施以外的其他有管辖权的人民法院起诉的，采取诉前保全措施的人民法院应当将保全手续移送受理案件的人民法院。诉前保全的裁定视为受移送人民法院作出的裁定。

**Article 160** Where one party files a lawsuit with the people's court of competent jurisdiction other than the people's court which takes the pre-litigation preservation measure, the people's court which takes such preservation measure shall refer preservation formalities to the people's court which accepts the case. The ruling of pre-litigation preservation shall be deemed a ruling made by the people's court receiving the formalities.

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**第一百六十一条** 对当事人不服一审判决提起上诉的案件，在第二审人民法院接到报送的案件之前，当事人有转移、隐匿、出卖或者毁损财产等行为，必须采取保全措施的，由第一审人民法院依当事人申请或者依职权采取。第一审人民法院的保全裁定，应当及时报送第二审人民法院。

**Article 161** For a case of appeal filed by a party that is not satisfied with the judgment of first instance, where the party transfers, conceals, sells or destroys the property before the people's court of second instance receives the case as submitted, and the property preservation measure shall be taken, the people's court of first instance shall take the property preservation measure on the request of a party or ex officio. The property preservation ruling made by the people's court of first instance shall be timely reported to the people's court of second instance.

**第一百六十二条** 第二审人民法院裁定对第一审人民法院采取的保全措施予以续保或者采取新的保全措施的，可以自行实施，也可以委托第一审人民法院实施。

**Article 162** Where the people's court of second instance rules that the preservation measure taken by the people's court of first instance shall be continued or a new preservation measure shall be taken, the people's court of second instance may enforce the ruling independently or entrust the people's court of first instance to enforce the ruling. Where the people's court of retrial rules that the original preservation measure shall be continued or a new preservation measure shall be taken, the said people's court may enforce the ruling independently or entrust the original people's court or an enforcement court to enforce the ruling.

再审人民法院裁定对原保全措施予以续保或者采取新的保全措施的，可以自行实施，也可以委托原审人民法院或者执行法院实施。

**第一百六十三条** 法律文书生效后，进入执行程序前，债权人因对方当事人转移财产等紧急情况，不申请保全将可能导致生效法律文书不能执行或者难以执行的，可以

**Article 163** After validation of a legal document and before the enforcement procedure, where the valid legal document may become unenforceable or difficult to be enforced if a creditor does not apply for preservation in any emergencies including transfer of property by the other party, the creditor may apply to an enforcement court to take the preservation measure. Where the creditor fails to apply for enforcement within five days after the expiration of the period for performance set out

向执行法院申请采取保全措施。债权人在法律文书指定的履行期间届满后五日内不申请执行的，人民法院应当解除保全。

**in the legal document, the people's court shall cancel the preservation.**

**第一百六十四条** 对申请保全人或者他人提供的担保财产，人民法院应当依法办理查封、扣押、冻结等手续。

**Article 164** In terms of secured property provided by the party applying for preservation or any other person, the people's court shall handle the formalities of seizure, detention or freezing in accordance with the law.

**第一百六十五条** 人民法院裁定采取保全措施后，除作出保全裁定的人民法院自行解除或者其上级人民法院决定解除外，在保全期限内，任何单位不得解除保全措施。

**Article 165** After the people's court takes the preservation measure, except where the people's court that rendered the preservation ruling or the superior people's court thereof decides to remove the preservation measure, no entity may lift the preservation measure within the period for preservation.

**第一百六十六条** 裁定采取保全措施后，有下列情形之一的，人民法院应当作出解除保全裁定：

**Article 166** After ruling to take the preservation measure, the people's court shall make a preservation lift ruling in any of the following circumstances: 1. the preservation is wrong;

（一）保全错误的；

2. the applicant revokes the application for preservation;

（二）申请人撤回保全申请的；

3. the lawsuit or claim of the applicant is overruled by a valid judgment; and

（三）申请人的起诉或者诉讼请求被生效裁判驳回的；

4. other circumstances under which the people's court deems that the preservation shall be removed.

（四）人民法院认为应当解除保

To lift a preservation measure implemented by way of registration, a notice requesting assistance in enforcement shall be issued to the relevant registration authority.

全的其他情形。

解除以登记方式实施的保全措施的，应当向登记机关发出协助执行通知书。

**第一百六十七条** 财产保全的被保全人提供其他等值担保财产且有利于执行的，人民法院可以裁定变更保全标的物为被保全人提供的担保财产。

**Article 167** Where the person against whom the preservation is adopted provides other equivalent secured property and it is favorable for enforcement, the people's court may change in its ruling the preservation subject matter into the secured property provided by the person against whom the preservation is adopted.

**第一百六十八条** 保全裁定未经人民法院依法撤销或者解除，进入执行程序后，自动转为执行中的查封、扣押、冻结措施，期限连续计算，执行法院无需重新制作裁定书，但查封、扣押、冻结期限届满的除外。

**Article 168** A preservation ruling, which is not revoked or cancelled by the people's court in accordance with the law, shall automatically generate the seizure, detention or freezing measure during the enforcement procedure, and a period shall be counted continuously, and the enforcement court does not need to prepare the ruling again, unless the seizure, detention or freezing period expires.

**第一百六十九条** 民事诉讼法规定的先予执行，人民法院应当在受理案件后终审判决作出前采取。先予执行应当限于当事人诉讼请求的范围，并以当事人的生活、生产经营的急需为限。

**Article 169** The prior enforcement prescribed in the Civil Procedure Law shall be conducted by the people's court after a case has been accepted but before the final judgment is made. The prior enforcement shall be limited to the scope of claims of the party and to the urgent needs for the life, production or business operation of the party.

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**第一百七十条** 民事诉讼法第一百零九条第三项规定的情况紧急，包括：

（一）需要立即停止侵害、排除妨碍的；

（二）需要立即制止某项行为的；

（三）追索恢复生产、经营急需的保险理赔费的；

（四）需要立即返还社会保险金、社会救助资金的；

（五）不立即返还款项，将严重影响权利人生活和生产经营的。

**Article 170 Urgent circumstances prescribed in Item 3 of Article 106 of the Civil Procedure Law include:**

1. it is necessary to immediately stop infringement and remove an obstacle;

2. it is necessary to immediately stop a certain act;

3. the insurance compensation in the urgent need for recovery of production or business operation is claimed;

4. it is necessary to immediately return social insurance payments and social assistance funds; and

5. failure to return monies immediately will severely affect the life, production and business operation of the obligee.

**第一百七十一条** 当事人对保全或者先予执行裁定不服的，可以自收到裁定书之日起五日内向作出裁定的人民法院申请复议。人民法院应当在收到复议申请后十日内审查。裁定正确的，驳回当事人的申请；裁定不当的，变更或者撤销原裁定。

**Article 171** Where a party objects to the preservation ruling or prior enforcement ruling, the party may apply for reconsideration to the people's court making the ruling within five days after receiving the ruling. The people's court shall conduct examination within ten days after receiving the application for reconsideration. Where the ruling is correct, the people's court will dismiss the application of the party; where the ruling is improper, the people's court will change or revoke the original ruling.

**第一百七十二条** 利害关系人对保全或者先予执行的裁定不服申请复议的，由作出裁定的人民法院依照民事诉讼法第一百一十一条规定处理。

**Article 172** Where an interested party is dissatisfied with a preservation ruling or prior enforcement ruling and applies for reconsideration, the people's court making the ruling shall deal with the application in accordance with Article 111 of the Civil Procedure Law.

**第一百七十三条** 人民法院先予执行后，根据发生法律效力判决，申请人应当返还因先予执行所取得的利益的，适用民事诉讼法第二百四十条的规定。

**Article 173** Where, after the prior enforcement by the people's court, an applicant shall return the proceeds obtained from prior enforcement in accordance with a judgment that has come into force, Article 240 of the Civil Procedure Law shall apply.

## 八、对妨害民事诉讼的强制措施

## Chapter VIII Compulsory Measures against Obstruction of Civil Proceedings

**第一百七十四条** 民事诉讼法第一百一十二条规定的必须到庭的被告，是指负有赡养、抚育、扶养义务和不到庭就无法查清案情的被告。

**Article 174** The defendant who shall appear in court as provided for in Article 112 of the Civil Procedure Law refers to the defendant who has the obligation of support, upbringing or maintenance and whose appearance in court is indispensable for the finding of the facts of the case. Where the plaintiff whose appearance in court is indispensable for the finding of basic the facts of the case has been served with a summons twice but still refuses to appear in court without legitimate reasons, the people's court may summon the plaintiff to court by force.

人民法院对必须到庭才能查清案件基本事实的原告，经两次传票传唤，无正当理由拒不到庭的，可以拘传。

**Article 175** A peremptory writ shall be issued for the coercive summon and be directly served on the summoned person.

**第一百七十五条** 拘传必须用

拘传票，并直接送达被拘传人；在拘传前，应当向被拘传人说明拒不到庭的后果，经批评教育仍拒不到庭的，可以拘传其到庭。

**Prior to the coercive summon, the summoned person shall be informed of the consequences in case of refusal to appear in court and may be summoned to court by force where he still refuses to appear in court after criticism and education.**

**第一百七十六条** 诉讼参与人或者其他有下列行为之一的，人民法院可以适用民事诉讼法第一百一十三条规定处理：

（一）未经准许进行录音、录像、摄影的；

（二）未经准许以移动通信等方式现场传播审判活动的；

（三）其他扰乱法庭秩序，妨害审判活动进行的。

有前款规定情形的，人民法院可以暂扣诉讼参与人或者其他人员进行录音、录像、摄影、传播审判活动的器材，并责令其删除有关内容；拒不删除的，人民法院可以采取必要手段强制删除。

**Article 176** Where participants in actions or other persons conduct any of the following behavior, the people's court may handle it in accordance with Article 113 of the Civil Procedure Law: 1. sound recording, video recording and photographing without permission;

2. live communication of judicial activities by means of mobile communications or otherwise without permission; and

3. other behavior disturbing court order and hindering judicial activities.

Under any of the following circumstances specified in the preceding paragraph, the people's court may temporarily detain apparatus used by participants in actions or other persons to conduct sound recording, video recording, photographing and communication of judicial activities, and order them to delete the relevant content; if they refuse to delete the relevant content, the people's court may take necessary measures to compulsorily delete the content.

**第一百七十七条** 训诫、责令退出法庭由合议庭或者独任审判员

**Article 177** Reprimands and orders to leave the court shall be determined by the collegiate bench or a single judge.

**Reprimand content and the illegality of the person ordered to**



决定。训诫的内容、被责令退出法庭者的违法事实应当记入庭审笔录。

leave the court shall be written down in court trial records.

**第一百七十八条** 人民法院依照民事诉讼法第一百一十三条至第一百一十七条的规定采取拘留措施的，应经院长批准，作出拘留决定书，由司法警察将被拘留人送交当地公安机关看管。

**Article 178** Where the people's court needs to take the detention measure in accordance with Articles 113 to 117 of the Civil Procedure Law, it shall be subject to approval by the court president, and a written detention decision shall be made, and the detainee shall be transferred by judicial police to the local public security organ for custody.

**第一百七十九条** 被拘留人不在本辖区的，作出拘留决定的人民法院应当派员到被拘留人所在地的人民法院，请该院协助执行，受委托的人民法院应当及时派员协助执行。被拘留人申请复议或者在拘留期间承认并改正错误，需要提前解除拘留的，受委托人民法院应当向委托人民法院转达或者提出建议，由委托人民法院审查决定。

**Article 179** Where the detainee does not reside within the jurisdiction of the people's court that makes the detention decision, such people's court shall assign officers to the people's court in the place where the detainee resides and request the latter to offer assistance in enforcement, and the entrusted people's court shall timely assign officers for assistance in enforcement. Where the detainee applies for reconsideration or admits and corrects errors during the course of detention, and the detention measure needs to be removed in advance, the entrusted people's court shall inform the entrusting people's court of the circumstance or bring forward a suggestion thereto for examination and decision.

**第一百八十条** 人民法院对被拘留人采取拘留措施后，应当在二十四小时内通知其家属；确实无法按时通知或者通知不到的，应当记

**Article 180** After taking the detention measure against a detainee, the people's court shall notify a family member of the detainee within 24 hours; if the people's court is unable to notify the family member on time or cannot notify the family member at all, this situation shall be documented.

录在案。

**第一百八十一条** 因哄闹、冲击法庭，用暴力、威胁等方法抗拒执行公务等紧急情况，必须立即采取拘留措施的，可在拘留后，立即报告院长补办批准手续。院长认为拘留不当的，应当解除拘留。

**Article 181** Where the detention measure needs to be immediately taken in the case of uproars, courtroom disturbance or defiance of the performance of official duties by violence, menace or otherwise, the people's court shall report the same to its president to supplement the approval formality after detaining the offenders. Where the court president deems that the detention measure is improper, the detention measure shall be lifted.

**第一百八十二条** 被拘留人在拘留期间认错悔改的，可以责令其具结悔过，提前解除拘留。提前解除拘留，应报经院长批准，并作出提前解除拘留决定书，交负责看管的公安机关执行。

**Article 182** Where the detainee admits his/her mistake and repents during the detention, he/she may be ordered to sign a statement of repentance and then the detention measure may be lifted in advance. The lift of detention in advance shall be subject to approval by the court president, and a written advance detention removal decision shall be made and given to the public security organ in charge of the custody of the detainee for enforcement.

**第一百八十三条** 民事诉讼法第一百一十三条至第一百一十六条规定的罚款、拘留可以单独适用，也可以合并适用。

**Article 183** The measures of fines and detention as provided for in Articles 113 to 116 of the Civil Procedure Law may be applied either separately or concurrently.

**第一百八十四条** 对同一妨害民事诉讼行为的罚款、拘留不得连续适用。发生新的妨害民事诉讼行为的，人民法院可以重新予以罚款、拘留。

**Article 184** The measures of fines and detention against the same obstruction of civil actions shall not be applied continuously. Where a new obstruction of civil actions occurs, the people's court may impose a fine and detention anew.

**第一百八十五条** 被罚款、拘留的人不服罚款、拘留决定申请复议的，应当自收到决定书之日起三日内提出。上级人民法院应当在收到复议申请后五日内作出决定，并将复议结果通知下级人民法院和当事人。

**Article 185** Where the person on which the measure of fines or detention is imposed is not satisfied with the fine or detention decision and applies for reconsideration, such application shall be filed within three days after the written decision is received. The people's court at the higher level shall make a decision within five days after receipt of the application for reconsideration and notify the people's court at the lower level and the parties of the reconsideration conclusion.

**第一百八十六条** 上级人民法院复议时认为强制措施不当的，应当制作决定书，撤销或者变更下级人民法院作出的拘留、罚款决定。情况紧急的，可以在口头通知后三日内发出决定书。

**Article 186** Where the people's court at the higher level holds that a coercive measure is improper at the time of reconsideration, it shall make a written decision to cancel or change the detention or fine decision made by the people's court at the lower level, and may issue an oral notice and send out the written decision within three days thereafter where the circumstance is urgent.

**第一百八十七条** 民事诉讼法第一百一十四条第一款第五项规定的以暴力、威胁或者其他方法阻碍司法工作人员执行职务的行为，包括：

**Article 187** Acts that obstruct judicial officers from performing their duties by violence, threat or other means as provided for in paragraph 1, paragraph 5, Article 114 of the Civil Procedure Law include: 1. making a noise or lingering at the people's court, and not obeying the dissuasion of judicial officers;

2. intentionally destroying or snatching a legal document or seizure mark of the people's court;

（一）在人民法院哄闹、滞留，不听从司法工作人员劝阻的；

3. making a noise or creating uproars at the site of performance of official duties, besieging or detaining persons performing official duties or assisting in the performance of official duties;

（二）故意毁损、抢夺人民法院法律文书、查封标志的；

4. destroying, snatching or seizing case materials, vehicles and other instruments used in the performance of official duties, clothes of persons performing official duties and certificates of

- (三) 哄闹、冲击执行公务现场，围困、扣押执行或者协助执行公务人员的；
- (四) 毁损、抢夺、扣留案件材料、执行公务车辆、其他执行公务器械、执行公务人员服装和执行公务证件的；
- (五) 以暴力、威胁或者其他方法阻碍司法工作人员查询、查封、扣押、冻结、划拨、拍卖、变卖财产的；
- (六) 以暴力、威胁或者其他方法阻碍司法工作人员执行职务的其他行为。
- performance of official duties;
5. obstructing judicial officers from the inquiry, seizure, detention, freezing, appropriation, auction or sales of property by violence, menace or otherwise; and
6. other acts that obstruct judicial officers from performing their duties by violence, menace or otherwise.

**第一百八十八条** 民事诉讼法第一百一十四条第一款第六项规定的拒不履行人民法院已经发生法律效力的判决、裁定的行为，包括：

(一) 在法律文书发生法律效力后隐藏、转移、变卖、毁损财产或者无偿转让财产、以明显不合理的价格交易财产、放弃到期债权、无

**Article 188 Acts that refuse to perform a legally effective judgment or ruling of the people's court as provided for in Item 6, Paragraph 1 of Article 114 of the Civil Procedure Law include:** 1. hiding, transferring, selling or destroying any property or transferring any property free of charge, trading any property at an apparently unreasonable price, waiving mature claims, providing security for others free of charge or otherwise after a legal document comes into force, resulting in failure to enforce the legal document by the people's court;

2. hiding, transferring, destroying or disposing of, without the permission of the people's court, any property with security provided for the people's court;

偿为他人提供担保等，致使人民法院无法执行的；

（二）隐藏、转移、毁损或者未经人民法院允许处分已向人民法院提供担保的财产的；

（三）违反人民法院限制消费令进行消费的；

（四）有履行能力而拒不按照人民法院执行通知履行生效法律文书确定的义务的；

（五）有义务协助执行的个人接到人民法院协助执行通知书后，拒不协助执行的。

3. consuming in violation of an order on restriction on high consumption of the people's court;

4. having the capacity but refusing to fulfil the obligations specified in a valid legal document according to a notice of enforcement of the people's court; and

5. having the obligation to assist in enforcement but refusing to provide assistance after receiving a notice requesting assistance in enforcement from the people's court.

**第一百八十九条** 诉讼参与人或者其他人有下列行为之一的，人民法院可以适用民事诉讼法第一百一十四条的规定处理：

（一）冒充他人提起诉讼或者参加诉讼的；

（二）证人签署保证书后作虚假

**Article 189** Where participants in actions or other persons have any of the following acts, the people's court may handle it in accordance with Article 114 of the Civil Procedure Law: 1. instituting an action or participating in an action in the name of any other person;

2. a witness giving false testimony after signing a guarantee, therefore hindering the people's court from hearing a case;

3. forging, hiding, destroying or refusing to hand over any important evidence on the capacity of fulfilment of the relevant party subject to enforcement, therefore hindering the people's court from finding property conditions of the party subject to

证言，妨碍人民法院审理案件的；

（三）伪造、隐藏、毁灭或者拒绝交出有关被执行人履行能力的重要证据，妨碍人民法院查明被执行人财产状况的；

（四）擅自解冻已被人民法院冻结的财产的；

（五）接到人民法院协助执行通知书后，给当事人通风报信，协助其转移、隐匿财产的。

enforcement;

4. arbitrarily unfreezing property frozen by the people's court; and

5. revealing information to the party and assisting the party in transferring or hiding property after receipt of a notice requesting assistance in enforcement as sent out by the people's court.

**第一百九十条** 民事诉讼法第一百一十五条规定的他人合法权益，包括案外人的合法权益、国家利益、社会公共利益。

第三人根据民事诉讼法第五十九条第三款规定提起撤销之诉，经审查，原案当事人之间恶意串通进行虚假诉讼的，适用民事诉讼法第一百一十五条规定处理。

**Article 190** The legitimate rights and interests of any other party as provided for in Article 115 of the Civil Procedure Law include the legitimate rights and interests of any outsider, national interests and public interests. Where a third party institutes legal proceedings of revocation in accordance with Paragraph 3 of Article 59 of the Civil Procedure Law, and it is found upon examination that the parties in the original case maliciously colluded and instituted false legal proceedings, Article 115 of the Civil Procedure Law shall be followed to handle it.

**第一百九十一条** 单位有民事诉讼法第一百一十五条或者第一百一十六条规定行为的，人民法院应

**Article 191** Where an entity conducts any behavior as provided for in Article 115 or 116 of the Civil Procedure Law, the people's court shall fine the said entity, and may fine and detain the main person in charge or persons directly liable of

当对该单位进行罚款，并可以对其主要负责人或者直接责任人员予以罚款、拘留；构成犯罪的，依法追究刑事责任。

**the entity; if a crime is constituted, the principal or persons directly liable therefor shall be subject to criminal liability in accordance with the law.**

**第一百九十二条** 有关单位接到人民法院协助执行通知书后，有下列行为之一的，人民法院可以适用民事诉讼法第一百一十七条规定处理：

- （一）允许被执行人高消费的；
- （二）允许被执行人出境的；
- （三）拒不停止办理有关财产权证照转移手续、权属变更登记、规划审批等手续的；
- （四）以需要内部请示、内部审批，有内部规定等为由拖延办理的。

**Article 192** Where an entity conducts any of the following acts after receiving a notice requesting assistance in enforcement from the people's court, the people's court may handle the case in accordance with **Article 117 of the Civil Procedure Law**: 1. allowing the high consumption of the party subject to enforcement;

2. allowing the party subject to enforcement to leave the country;

3. refusing the termination of the formalities for transfer of title deeds, registration of ownership change, planning examination and approval; and

4. delaying the handling on the ground that there is the requirement of internal instruction, internal examination and approval, internal provisions or others.

**第一百九十三条** 人民法院对个人或者单位采取罚款措施时，应当根据其实施妨害民事诉讼行为的性质、情节、后果，当地的发展水平，以及诉讼标的额等因素，

**Article 193** When the people's court takes the fine measure against any individual or entity, it shall determine the corresponding fine amount within the limit as provided for in **Paragraph 1 of Article 118 of the Civil Procedure Law**, depending on factors such as the nature, circumstance and consequence of the behavior of obstructing a civil action, local economic development level as well as the subject



最高人民法院关于适用《中华人民共和国民事诉讼法》的解释（2022 修正）

在民事诉讼法第一百一十八条第一款规定的限额内确定相应的罚款金额。

**amount of litigation.**

## 九、诉讼费用

## Chapter IX Litigation Costs

**第一百九十四条** 依照民事诉讼法第五十七条审理的案件不预交案件受理费，结案后按照诉讼标的额由败诉方交纳。

**Article 194** For a case heard in accordance with Article 57 of the Civil Procedure Law, no case acceptance fee needs to be paid in advance, and the losing party shall supplement the case acceptance fee based on the subject amount of litigation after the case has been settled.

**第一百九十五条** 支付令失效后转入诉讼程序的，债权人应当按照《诉讼费用交纳办法》补交案件受理费。

**Article 195** Where a case enters into legal proceedings after a payment order loses effect, a creditor shall supplement the case acceptance fee in accordance with the Measures for the Payment of Litigation Fees. Where a creditor files another lawsuit after the payment order is revoked, the creditor shall pay litigation costs in accordance with the Measures for the Payment of Litigation Fees.

支付令被撤销后，债权人另行起诉的，按照《诉讼费用交纳办法》交纳诉讼费用。

**第一百九十六条** 人民法院改变原判决、裁定、调解结果的，应当在裁判文书中对原审诉讼费用的负担一并作出处理。

**Article 196** Where the people's court changes the original judgment, ruling or mediation results, it shall also stipulate the undertaking of litigation costs of the first trial in the judgment.

**第一百九十七条** 诉讼标的物是证券的，按照证券交易规则并根据当事人起诉之日前最后一个交易

**Article 197** Where the subject matter of litigation is securities, the amount of the said subject matter shall be calculated according to securities transaction rules and as per the closing price on the last trading day before the day of

最高人民法院关于适用《中华人民共和国民事诉讼法》的解释（2022 修正）

日的收盘价、当日的市场价或者其载明的金额计算诉讼标的金额。

**litigation of one party, the market price that day or the face value.**

**第一百九十八条** 诉讼标的物是房屋、土地、林木、车辆、船舶、文物等特定物或者知识产权，起诉时价值难以确定的，人民法院应当向原告释明主张过高或者过低的诉讼风险，以原告主张的价值确定诉讼标的金额。

**Article 198** Where the subject matter of litigation is a house, land, forest, vehicle, ship, cultural relic or any other special object or intellectual property right, and the value thereof is difficult to determine at the time of litigation, the people's court shall explain to the plaintiff the litigation risks of an excessively high or lower claim, and determine the amount of the subject matter of litigation as per the value claimed by the plaintiff.

**第一百九十九条** 适用简易程序审理的案件转为普通程序的，原告自接到人民法院交纳诉讼费用通知之日起七日内补交案件受理费。

**Article 199** Where a case in which the summary procedure applies for hearing is changed to the ordinary procedure, the plaintiff shall supplement the case acceptance fee within seven days after receiving a notice of payment of litigation costs from the people's court. Where the plaintiff fails to supplement the litigation costs in full on time for no proper reason, the people's court shall take the case as a nol pros and return half of the collected litigation costs.

原告无正当理由未按期足额补交的，按撤诉处理，已经收取的诉讼费用退还一半。

**第二百条** 破产程序中有关债务人的民事诉讼案件，按照财产案件标准交纳诉讼费，但劳动争议案件除外。

**Article 200** As for civil litigation cases concerning a debtor in bankruptcy procedures, litigation costs shall be paid according to the standards of property cases, except for labor dispute cases.

**第二百零一条** 既有财产性诉讼请求，又有非财产性诉讼请求

**Article 201** Where there are both property claims and non-property claims, litigation costs shall be paid according to the standards of property claims. Where there are several property claims, litigation costs shall be summed up and paid; where there

的，按照财产性诉讼请求的标准交纳诉讼费。

有多个财产性诉讼请求的，合并计算交纳诉讼费；诉讼请求中有多个非财产性诉讼请求的，按一件交纳诉讼费。

are several non-property claims, litigation costs shall be paid for each non-property claim.

**第二百零二条** 原告、被告、第三人分别上诉的，按照上诉请求分别预交二审案件受理费。

同一方多人共同上诉的，只预交一份二审案件受理费；分别上诉的，按照上诉请求分别预交二审案件受理费。

**Article 202** Where the plaintiff, defendant and a third party institute an appeal respectively, the second-instance case acceptance fee shall be paid in advance respectively according to the appeals. Where several persons of the same party concerned institute an appeal jointly, only the sum total of the second-instance case acceptance fees shall be paid in advance; where they institute an appeal respectively, the second-instance case acceptance fee shall be paid in advance according to the respective appeals.

**第二百零三条** 承担连带责任的当事人败诉的，应当共同负担诉讼费用。

**Article 203** Where parties bearing joint and several liability lose the lawsuit, they shall jointly bear the litigation costs.

**第二百零四条** 实现担保物权案件，人民法院裁定拍卖、变卖担保财产的，申请费由债务人、担保人负担；人民法院裁定驳回申请的，申请费由申请人负担。

**Article 204** Where the people's court orders the auction or sale of secured property for a case concerning the exercise of security interests, the application fee shall be borne by the debtor and the guarantor; where the people's court overrules the application, the application fee shall be borne by the applicant. Where the applicant files another lawsuit, the application fee paid therefor may be deducted from the case acceptance fee.

申请人另行起诉的，其已经交

纳的申请费可以从案件受理费中扣除。

**第二百零五条** 拍卖、变卖担保财产的裁定作出后，人民法院强制执行执行的，按照执行金额收取执行申请费。

**Article 205** Where the people's court enforces the order for auction or sale of the secured property after the order is made, it shall charge an enforcement application fee as per the enforced amount.

**第二百零六条** 人民法院决定减半收取案件受理费的，只能减半一次。

**Article 206** Where the people's court decides to collect half of the case acceptance fee, it can halve the said fee once only.

**第二百零七条** 判决生效后，胜诉方预交但不应负担的诉讼费用，人民法院应当退还，由败诉方向人民法院交纳，但胜诉方自愿承担或者同意败诉方直接向其支付的除外。

**Article 207** After a judgment takes effect, the people's court shall return litigation costs which the winning party has prepaid but shall not bear and the losing party shall pay, unless the winning party is willing to bear the litigation costs or agrees that the losing party will directly repay the litigation costs thereto. Where the party refuses to pay the litigation costs, the people's court may enforce payment of the litigation costs.

当事人拒不交纳诉讼费用的，人民法院可以强制执行。

## 十、第一审普通程序

## Chapter X Ordinary Procedure of First Instance

**第二百零八条** 人民法院接到当事人提交的民事起诉状时，对符合民事诉讼法第一百二十二条的规定，且不属于第一百二十七条规定

**Article 208** When the people's court receives a civil statement of claim from a party, if the provision of Article 122 of the Civil Procedure Law is conformed with and the circumstance is not one of those as provided for in Article 127 of the Civil Procedure Law, the people's court shall register the civil statement of claim and put the litigation on file; if it is unable

情形的，应当登记立案；对当场不能判定是否符合起诉条件的，应当接收起诉材料，并出具注明收到日期的书面凭证。

需要补充必要相关材料的，人民法院应当及时告知当事人。在补齐相关材料后，应当在七日内决定是否立案。

立案后发现不符合起诉条件或者属于民事诉讼法第一百二十七条规定情形的，裁定驳回起诉。

**to judge whether the conditions for the institution of an action are satisfied on the site, the people's court shall receive the litigation materials, and issue a written receipt with the receiving date marked.** If it is necessary to supplement the relevant necessary materials, the people's court shall notify the party in a timely manner. After the relevant materials are supplemented, the people's court shall decide whether to put the litigation on file within seven days.

Where the people's court finds that the conditions for the institution of an action are not satisfied or the circumstance is one of those as provided for in Article 127 of the Civil Procedure Law after putting the litigation on file, it shall overrule the action.

**第二百零九条** 原告提供被告的姓名或者名称、住所等信息具体明确，足以使被告与他人相区别的，可以认定为有明确的被告。

起诉状列写被告信息不足以认定明确的被告的，人民法院可以告知原告补正。原告补正后仍不能确定明确的被告的，人民法院裁定不予受理。

**Article 209** Where a plaintiff provides concrete information such as the name and domicile of the defendant sufficient to differentiate the defendant from any other person, it can be affirmed that there is a definite defendant. Where the information on the defendant in a statement of claim is insufficient to affirm a definite defendant, the people's court may inform the plaintiff that the plaintiff shall supplement the relevant information. Where the plaintiff cannot determine a definite defendant either after supplementation, the people's court shall reject the case.

**第二百一十条** 原告在起诉状中有谩骂和人身攻击之辞的，人民

**Article 210** Where a plaintiff uses words of vituperation or personal assault in the statement of claim, the people's court shall inform the plaintiff that the plaintiff shall make

法院应当告知其修改后提起诉讼。

**corrections and then file a lawsuit.**

**第二百一十一条** 对本院没有管辖权的案件，告知原告向有管辖权的人民法院起诉；原告坚持起诉的，裁定不予受理；立案后发现本院没有管辖权的，应当将案件移送有管辖权的人民法院。

**Article 211** Where the people's court has no jurisdiction over a case, it shall notify the plaintiff that the plaintiff may file the case with the people's court of competent jurisdiction; if the plaintiff persists in filing the case with it, it shall reject the case; if the people's court finds that it has no jurisdiction over the case after placing the case on the docket, it shall refer the case to the people's court of competent jurisdiction.

**第二百一十二条** 裁定不予受理、驳回起诉的案件，原告再次起诉，符合起诉条件且不属于民事诉讼法第一百二十七条规定情形的，人民法院应予受理。

**Article 212** Where the people's court has rejected or dismissed a case, if the plaintiff files the case again, and the action complies with conditions for the institution of an action and does not fall under any of the circumstances as provided for in Article 127 of the Civil Procedure Law, the people's court shall accept the case.

**第二百一十三条** 原告应当预交而未预交案件受理费，人民法院应当通知其预交，通知后仍不预交或者申请减、缓、免未获批准而仍不预交的，裁定按撤诉处理。

**Article 213** Where a plaintiff must pay the case acceptance fee in advance but fails to do so, the people's court shall notify the plaintiff to make advance payment. Where the plaintiff still fails to make advance payment after being notified, or the application thereof for reduction, postponement or exemption of the case acceptance fee is not approved by the people's court but the plaintiff still fails to make advance payment, the people's court shall rule that the plaintiff has automatically withdrawn the action.

**第二百一十四条** 原告撤诉或者人民法院按撤诉处理后，原告以同一诉讼请求再次起诉的，人民法院应予受理。

**Article 214** Where, after the plaintiff has withdrawn the action or the people's court has taken the case as a nol pros, the plaintiff files a new action for the same claim, the people's court shall accept the action. For a divorce case that has been withdrawn by the plaintiff or taken by the people's court as a nol pros, if the suit is filed again within six months in the absence of new circumstances or new reasons, it shall not be accepted by

原告撤诉或者按撤诉处理的离婚案件，没有新情况、新理由，六个月内又起诉的，比照民事诉讼法第一百二十七条第七项的规定不予受理。

applying mutatis mutandis the provisions of Item 7 of Article 127 of the Civil Procedure Law.

**第二百一十五条** 依照民事诉讼法第一百二十七条第二项的规定，当事人在书面合同中订有仲裁条款，或者在发生纠纷后达成书面仲裁协议，一方向人民法院起诉的，人民法院应当告知原告向仲裁机构申请仲裁，其坚持起诉的，裁定不予受理，但仲裁条款或者仲裁协议不成立、无效、失效、内容不明确无法执行的除外。

**Article 215** According to Item 2 of Article 127 of the Civil Procedure Law, where the parties have stipulated an arbitration clause in a written contract or, after a dispute occurs, reached a written arbitration agreement, if one party files a lawsuit with the people's court, the people's court shall notify the plaintiff that the plaintiff shall submit the dispute to an arbitration agency for arbitration; if the party insists on filing a lawsuit, the people's court shall rule not to accept the case, unless the arbitration clause or arbitration agreement is untenable, invalid or becomes invalid, or the content therein is ambiguous and thus cannot be enforced.

**第二百一十六条** 在人民法院首次开庭前，被告以有书面仲裁协议为由对受理民事案件提出异议的，人民法院应当进行审查。

经审查符合下列情形之一的，人民法院应当裁定驳回起诉：

（一）仲裁机构或者人民法院已

**Article 216** Prior to the first hearing by the people's court, where the defendant raises an objection to the acceptance of a civil case on the ground that there is a written arbitration agreement, the people's court shall examine the objection. Upon examination, in any of the following circumstances, the people's court shall rule to dismiss the action:

1. an arbitration agency or the people's court has confirmed that the arbitration agreement is valid;
2. the party fails to raise an objection to the force of the arbitration agreement before the first hearing by the arbitral tribunal; or
3. the arbitration agreement conforms to the provision of Article 16



经确认仲裁协议有效的；

（二）当事人没有在仲裁庭首次开庭前对仲裁协议的效力提出异议的；

（三）仲裁协议符合仲裁法第十六条规定且不具有仲裁法第十七条规定情形的。

of the Arbitration Law of the People's Republic of China and falls under none of the circumstances as provided for in Article 17 of the Arbitration Law.

**第二百一十七条** 夫妻一方下落不明，另一方诉至人民法院，只要求离婚，不申请宣告下落不明人失踪或者死亡的案件，人民法院应当受理，对下落不明人公告送达诉讼文书。

**Article 217** Where the whereabouts of the husband or the wife are unknown and the other party sues in the people's court for divorce but not for a declaration that the party whose whereabouts are unknown is missing or dead, the people's court shall accept the case and serve the litigation documents on the party whose whereabouts are unknown by public notice.

**第二百一十八条** 赡养费、扶养费、抚养费案件，裁判发生法律效力后，因新情况、新理由，一方当事人再行起诉要求增加或者减少费用的，人民法院应作为新案受理。

**Article 218** If, after the judgment has taken legal effect, a party to a case of support payments, maintenance payments or upbringing payments brings a suit again for an increase or reduction of the payments due to new circumstances or new reasons, the people's court shall accept the case as a new case.

**第二百一十九条** 当事人超过诉讼时效期间起诉的，人民法院应予受理。受理后对方当事人提出诉

**Article 219** Where a party files a lawsuit after expiration of the limitation of action, the people's court shall accept the case. After accepting the case, if the other party raises a limitation of action defense, and the people's court, after hearing the case, considers that the defense is tenable, it shall make a

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讼时效抗辩，人民法院经审理认为抗辩事由成立的，判决驳回原告的诉讼请求。

**judgment rejecting the plaintiff's claim.**

**第二百二十条** 民事诉讼法第七十一条、第一百三十七条、第一百五十九条规定的商业秘密，是指生产工艺、配方、贸易联系、购销渠道等当事人不愿公开的技术秘密、商业情报及信息。

**Article 220** The trade secrets as mentioned in Articles 71, 137 and 159 of the Civil Procedure Law mainly refer to technical secrets, business intelligence and information with respect to manufacturing techniques, formulas, business contacts, and buying and selling channels that one party is unwilling to disclose.

**第二百二十一条** 基于同一事实发生的纠纷，当事人分别向同一人民法院起诉的，人民法院可以合并审理。

**Article 221** Where the parties respectively file a lawsuit with the same people's court regarding a dispute over the same fact, the people's court may consolidate the lawsuits for trial.

**第二百二十二条** 原告在起诉状中直接列写第三人的，视为其申请人民法院追加该第三人参加诉讼。是否通知第三人参加诉讼，由人民法院审查决定。

**Article 222** Where the plaintiff directly specifies a third party in the statement of claim, it shall be deemed that the plaintiff applies to the people's court to add the said third party to participate in the litigation. The people's court shall decide upon examination whether to notify the third party of the participation thereof in the litigation.

**第二百二十三条** 当事人在提交答辩状期间提出管辖异议，又针对起诉状的内容进行答辩的，人民法院应当依照民事诉讼法第一百三十条第一款的规定，对管辖异议进

**Article 223** Where a party raises an objection to jurisdiction within the period for submitting a statement of defense and defends against the content of the statement of claim, the people's court shall examine the objection in accordance with Paragraph 1 of Article 130 of the Civil Procedure Law. If the party does not raise any objection to the jurisdiction, and makes a defense, statement or counterclaim on the substantive contents of

行审查。

the case, it may be deemed as the respondent's defense as provided for in paragraph 2 of Article 130 of the Civil Procedure Law.

当事人未提出管辖异议，就案件实体内容进行答辩、陈述或者反诉的，可以认定为民事诉讼法第一百三十条第二款规定的应诉答辩。

**第二百二十四条** 依照民事诉讼法第一百三十六条第四项规定，人民法院可以在答辩期届满后，通过组织证据交换、召集庭前会议等方式，作好审理前的准备。

**Article 224 According to Item 4 of Article 136 of the Civil Procedure Law, the people's court may make preparations before trial by means of organizing evidence exchange, convening pretrial meetings or otherwise after the expiration of the defense period.**

**第二百二十五条** 根据案件具体情况，庭前会议可以包括下列内容：

**Article 225 In light of the concrete conditions of a case, pretrial meetings may include the following content:** 1. defining claims of the plaintiff and defenses of the defendant;

（一）明确原告的诉讼请求和被告的答辩意见；

2. examining and handling the addition to the parties, application for change in claims and counterclaim proposed, as well as claims regarding the case brought forward by a third party;

（二）审查处理当事人增加、变更诉讼请求的申请和提出的反诉，以及第三人提出的与本案有关的诉讼请求；

3. deciding the investigation and collection of evidence according to the application of a party, entrusting an expert to conduct examination, requiring the party to provide evidence, conducting inspection, and conducting evidence preservation;

4. organizing evidence exchange;

5. summing up focuses of dispute; and

（三）根据当事人的申请决定调查收集证据，委托鉴定，要求当事人提供证据，进行勘验，进行证据

6. conducting mediation.

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保全；

(四)组织交换证据；

(五)归纳争议焦点；

(六)进行调解。

**第二百二十六条** 人民法院应当根据当事人的诉讼请求、答辩意见以及证据交换的情况，归纳争议焦点，并就归纳的争议焦点征求当事人的意见。

**Article 226** The people's court shall sum up the focuses of a dispute according to the claims, defenses and situation of evidence exchange of the parties, and seek the opinions of the parties on the focuses of the dispute summed up.

**第二百二十七条** 人民法院适用普通程序审理案件，应当在开庭三日前用传票传唤当事人。对诉讼代理人、证人、鉴定人、勘验人、翻译人员应当用通知书通知其到庭。当事人或者其他诉讼参与人在外地的，应当留有必要的在途时间。

**Article 227** When applying the ordinary procedure to try a case, the people's court shall, three days before the court session, serve summonses on the parties, and notify by a notice the agents ad litem, witnesses, experts, inspectors and interpreters that they should appear in court. Where any party or any other participants in the action reside in another place, the people's court shall arrange the necessary time to travel for them.

**第二百二十八条** 法庭审理应当围绕当事人争议的事实、证据和法律适用等焦点问题进行。

**Article 228** The court trial shall be conducted by centering on the focuses of the dispute such as facts disputed by the parties, evidence and application of laws.

**第二百二十九条** 当事人在庭

**Article 229** Where a party brings forward, in court, different opinions on facts and evidence from that offered in the

审中对其在审理前的准备阶段认可的事实和证据提出不同意见的，人民法院应当责令其说明理由。必要时，可以责令其提供相应证据。人民法院应当结合当事人的诉讼能力、证据和案件的具体情况进行审查。理由成立的，可以列入争议焦点进行审理。

**preparation period before trial, the people's court shall order the party to explain the reasons therefor. When necessary, the people's court may order the party to provide corresponding evidence. The people's court shall conduct an examination in light of the capacity to act of the parties, evidence and concrete conditions of a case. Where the reasons are tenable, the aforesaid opinions may be included in the focuses of the dispute for trial.**

**第二百三十条** 人民法院根据案件具体情况并征得当事人同意，可以将法庭调查和法庭辩论合并进行。

**Article 230 In light of the concrete conditions of a case and upon consent of the parties, the people's court may consolidate court investigations and court deliberation.**

**第二百三十一条** 当事人在法庭上提出新的证据的，人民法院应当依照民事诉讼法第六十八条第二款规定和本解释相关规定处理。

**Article 231 Where a party brings forward any new evidence in court, the people's court shall handle it in accordance with Paragraph 2 of Article 68 of the Civil Procedure Law and the relevant provisions hereof.**

**第二百三十二条** 在案件受理后，法庭辩论结束前，原告增加诉讼请求，被告提出反诉，第三人提出与本案有关的诉讼请求，可以合并审理的，人民法院应当合并审理。

**Article 232 Where, after a case has been accepted but before the court deliberations are finalized, the plaintiff adds any claim, or the defendant files a counterclaim, or a third party file a claim regarding the case in question, and the said claims or counterclaim can be heard on a consolidated basis, the people's court shall consolidate the trials.**

**第二百三十三条** 反诉的当事

**Article 233 The parties to the counterclaim shall be limited to**

人应当限于本诉的当事人的范围。

反诉与本诉的诉讼请求基于相同法律关系、诉讼请求之间具有因果关系，或者反诉与本诉的诉讼请求基于相同事实的，人民法院应当合并审理。

反诉应由其他人民法院专属管辖，或者与本诉的诉讼标的及诉讼请求所依据的事实、理由无关联的，裁定不予受理，告知另行起诉。

**the parties to the present claim.** Where the counterclaim and the present claim are based on the same legal relations, or there is causality between the counterclaim and the present claim, or the counterclaim and the present claim are based on the same facts, the people's court shall hear such counterclaim and the present claim on a consolidated basis.

Where the counterclaim is under the exclusive jurisdiction of another people's court, or is irrelevant to facts and reasons on which the subject matter and the present claim are based, the people's court shall rule not to accept the action and instruct the party to file a separate lawsuit.

#### **第二百三十四条** 无民事行为

能力人的离婚诉讼，当事人的法定代理人应当到庭；法定代理人不能到庭的，人民法院应当在查清事实的基础上，依法作出判决。

**Article 234** In divorce proceedings of a person without capacity for civil conduct, his/her statutory agent shall appear in court; if the statutory agent is unable to appear in court, the people's court shall render a judgment in accordance with the law after the facts have been ascertained.

#### **第二百三十五条** 无民事行为

能力的当事人的法定代理人，经传票传唤无正当理由拒不到庭，属于原告方的，比照民事诉讼法第一百四十六条的规定，按撤诉处理；属于被告方的，比照民事诉讼法第一百四十七条的规定，缺席判决。必

**Article 235** Where the statutory agent of a party without capacity for civil conduct refuses to appear in court without any justifiable reasons after being summoned to do so, if the party is the plaintiff, the people's court may take the case as a *nol pros* by reference to Article 146 of the Civil Procedure Law; and if the party is the defendant, the people's court may render a default judgment by reference to Article 147 of the Civil Procedure Law. When necessary, the people's court may summon the party to court by force.

要时，人民法院可以拘传其到庭。

**第二百三十六条** 有独立请求权的第三人经人民法院传票传唤，无正当理由拒不到庭的，或者未经法庭许可中途退庭的，比照民事诉讼法第一百四十六条的规定，按撤诉处理。

**Article 236** Where a third party with independent claims refuses to appear in court without any justifiable reasons after being summoned to do so by the people's court or leaves from a court session midway without the permission of the court, the people's court may take the case as a *nol pros* by reference to Article 146 of the Civil Procedure Law.

**第二百三十七条** 有独立请求权的第三人参加诉讼后，原告申请撤诉，人民法院在准许原告撤诉后，有独立请求权的第三人作为另案原告，原案原告、被告作为另案被告，诉讼继续进行。

**Article 237** Where, after a third party with independent claims participates in litigation, the plaintiff applies for withdrawal of the case, the people's court shall, after granting the approval, accept the third party with independent claims as the plaintiff in another case, and the plaintiff and the defendant in the original case as the defendants in another case, and process the litigation continually.

**第二百三十八条** 当事人申请撤诉或者依法可以按撤诉处理的案件，如果当事人有违反法律的行为需要依法处理的，人民法院可以不准许撤诉或者不按撤诉处理。

**Article 238** For a case to which a party applies for withdrawal of the action or which can be taken as in accordance with the law, where there is any illegal act committed by one party that needs to be handled in accordance with the law, the people's court may not permit the withdrawal or not accept the case as a *nol pros*. Where the plaintiff applies for withdrawal of the action after the court's deliberation is finalized but the defendant does not agree, the people's court may not approve the application.

法庭辩论终结后原告申请撤诉，被告不同意的，人民法院可以不予准许。

**第二百三十九条** 人民法院准

**Article 239** Where the people's court allows the plaintiff to withdraw the present lawsuit, the trial of the counterclaim



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许本诉原告撤诉的，应当对反诉继续审理；被告申请撤回反诉的，人民法院应予准许。

**shall continue; if the defendant applies to withdraw the counterclaim, the people's court shall grant permission.**

**第二百四十条** 无独立请求权的第三人经人民法院传票传唤，无正当理由拒不到庭，或者未经法庭许可中途退庭的，不影响案件的审理。

**Article 240** Where a third party without independent claims refuses to appear in court without any justifiable reasons after being summoned to do so by the people's court or leaves from a court session midway without the permission of the court, it will not affect the trial of the case.

**第二百四十一条** 被告经传票传唤无正当理由拒不到庭，或者未经法庭许可中途退庭的，人民法院应当按期开庭或者继续开庭审理，对到庭的当事人诉讼请求、双方的诉辩理由以及已经提交的证据及其他诉讼材料进行审理后，可以依法缺席判决。

**Article 241** Where the defendant refuses to appear in court without any justifiable reasons after being summoned to do so or leaves from a court session midway without the permission of the court, the people's court shall open a court session on schedule or continue the court session, and may render a default judgment in accordance with the law after hearing the claims of the parties appearing in court, action and defense reasons of both parties, evidence provided as well as other action materials.

**第二百四十二条** 一审宣判后，原审人民法院发现判决有错误，当事人在上诉期内提出上诉的，原审人民法院可以提出原判决有错误的意见，报送第二审人民法院，由第二审人民法院按照第二审程序进行审理；当事人不上诉的，

**Article 242** Where, after the pronouncement at first instance, the people's court of original instance discovers any adjudication error, and a party files an appeal within the time limit for appeal, the people's court of original instance may forward opinions on the errors in the original judgment to the people's court of second instance, which shall hear the case in accordance with the procedure of second instance; if no party files an appeal, the case shall be dealt with under the procedure for trial supervision.

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按照审判监督程序处理。

**第二百四十三条** 民事诉讼法第一百五十二条规定的审限，是指从立案之日起至裁判宣告、调解书送达之日止的期间，但公告期间、鉴定期间、双方当事人和解期间、审理当事人提出的管辖异议以及处理人民法院之间的管辖争议期间不应计算在内。

**第二百四十四条** 可以上诉的判决书、裁定书不能同时送达双方当事人的，上诉期从各自收到判决书、裁定书之日计算。

**第二百四十五条** 民事诉讼法第一百五十七条第一款第七项规定的笔误是指法律文书误写、误算，诉讼费用漏写、误算和其他笔误。

**第二百四十六条** 裁定中止诉讼的原因消除，恢复诉讼程序时，不必撤销原裁定，从人民法院通知或者准许当事人双方继续进行诉讼时起，中止诉讼的裁定即失去效力。

**Article 243** The time limit specified in Article 152 of the Civil Procedure Law shall be the period from the day of placing the case on the docket to the day when a judgment is pronounced or a mediation statement is served, excluding the period for announcement, examination by experts, reconciliation period of both parties, and hearing of any objection to jurisdiction raised by a party or dealing with a jurisdictional dispute raised between the people's courts dealing with the case.

**Article 244** Where a judgment and ruling to permit an appeal are unable to be served on both parties simultaneously, the period for appeal shall start from the day of their respective receipt of the judgment and ruling.

**Article 245** The clerical errors specified in Item 7, Paragraph 1 of Article 157 of the Civil Procedure Law include incorrect writing and miscalculation in legal instruments, the omission or miscalculation of litigation costs and other clerical errors.

**Article 246** If the reasons for suspension of proceedings disappear, the original ruling does not have to be revoked when the proceedings are resumed. From the moment when the people's court instructs, by issuing a notice, or permits both parties to continue the legal proceedings, the ruling to suspend the proceedings shall become invalid.

**第二百四十七条** 当事人就已经提起诉讼的事项在诉讼过程中或者裁判生效后再次起诉，同时符合下列条件的，构成重复起诉：

（一）后诉与前诉的当事人相同；

（二）后诉与前诉的诉讼标的相同；

（三）后诉与前诉的诉讼请求相同，或者后诉的诉讼请求实质上否定前诉裁判结果。

当事人重复起诉的，裁定不予受理；已经受理的，裁定驳回起诉，但法律、司法解释另有规定的除外。

**第二百四十八条** 裁判发生法律效力后，发生新的事实，当事人再次提起诉讼的，人民法院应当依法受理。

**第二百四十九条** 在诉讼中，争议的民事权利义务转移的，不影响当事人的诉讼主体资格和诉讼地

**Article 247** Where a party files a lawsuit again concerning a matter under a filed lawsuit in the process of the lawsuit or after a judgment takes effect, and the following conditions are met, such lawsuit shall constitute a repeated lawsuit: 1. the parties to the latter lawsuit and those to the former lawsuit are the same;

2. the subject matter of the latter lawsuit and that of the former lawsuit is the same; and

3. claims of the latter lawsuit and those of the former lawsuit are the same or claims of the latter lawsuit essentially deny the judgment results of the former lawsuit.

Where a party files a lawsuit repeatedly, the people's court shall not accept the lawsuit; where the people's court has accepted the lawsuit, it shall rule to dismiss the lawsuit, unless otherwise stipulated by laws and judicial interpretations.

**Article 248** Where a party files a lawsuit again due to any new fact after a judgment takes effect, the people's court shall accept the lawsuit in accordance with the law.

**Article 249** Where any disputed civil rights and obligations are transferred in a lawsuit, the subject qualifications and status of the parties to the lawsuit shall not be affected. The judgment and ruling made by the people's court and having

位。人民法院作出的发生法律效力  
的判决、裁定对受让人具有拘束  
力。

受让人申请以无独立请求权的  
第三人身份参加诉讼的，人民法院  
可予准许。受让人申请替代当事人  
承担诉讼的，人民法院可以根据案  
件的具体情况决定是否准许；不予  
准许的，可以追加其为无独立请求  
权的第三人。

**第二百五十条** 依照本解释第  
二百四十九条规定，人民法院准许  
受让人替代当事人承担诉讼的，裁  
定变更当事人。

变更当事人后，诉讼程序以受  
让人为当事人继续进行，原当事人  
应当退出诉讼。原当事人已经完成  
的诉讼行为对受让人具有拘束力。

**第二百五十一条** 二审裁定撤  
销一审判决发回重审的案件，当事  
人申请变更、增加诉讼请求或者提  
出反诉，第三人提出与本案有关的  
诉讼请求的，依照民事诉讼法第一

**taken effect shall be binding upon the transferee.** Where a  
transferee applies to participate in litigation in the capacity of a  
third party without independent claims, the people's court may  
permit the application. Where a transferee applies to replace a  
party to undertake litigation, the people's court may decide whether  
to approve the application in light of the concrete conditions of the  
case; if the people's court does not approve the application, it may  
add the transferee as a third party without independent claims.

**Article 250** Where the people's court allows the transferee to  
assume the litigation in place of the party in accordance with  
**Article 249 of this Interpretation, it shall rule to change the**  
**party.** After the party is changed, legal proceedings shall be  
continued with the transferee as a party, and the original party  
shall withdraw from the litigation. Procedural acts completed by the  
original party shall be binding upon the transferee.

**Article 251** For a case in which the judgment of first instance  
is revoked and the case is remanded for retrial at second  
instance, if a party applies for a change or addition of any  
claim or files a counterclaim, or a third party makes any claim  
irrelevant to the case in question, Article 143 of the Civil  
Procedure Law shall apply.

百四十三条规定处理。

## **第二百五十二条** 再审裁定撤

销原判决、裁定发回重审的案件，当事人申请变更、增加诉讼请求或者提出反诉，符合下列情形之一的，人民法院应当准许：

（一）原审未合法传唤缺席判决，影响当事人行使诉讼权利的；

（二）追加新的诉讼当事人的；

（三）诉讼标的物灭失或者发生变化致使原诉讼请求无法实现的；

（四）当事人申请变更、增加的诉讼请求或者提出的反诉，无法通过另诉解决的。

**Article 252** For a case in which the original judgment is revoked upon retrial and the case is remanded for retrial, if a party applies for a change or addition of any claims or files a counterclaim, the people's court shall grant approval under any of the following circumstances: 1. a default judgment is made without lawful summoning at the original trial, affecting the exercise of litigation rights by the party;

2. a new party concerned is added to the litigation;

3. the subject matter of litigation is lost or changed, making an original claim unable to be realized; and

4. the application by the party for a change or addition of any claims or the counterclaim filed cannot be solved through another lawsuit.

## **第二百五十三条** 当庭宣判的

案件，除当事人当庭要求邮寄发送裁判文书的外，人民法院应当告知当事人或者诉讼代理人领取裁判文书的时间和地点以及逾期不领取的法律后果。上述情况，应当记入笔录。

**Article 253** For a case with a judgment pronounced in court, unless a party in court requires the written judgment to be sent by post, the people's court shall inform the parties or agent ad litem thereof of the time and place to obtain the written judgment and legal consequences of failure to obtain it on time. The aforesaid information shall be entered in the written record.

**第二百五十四条** 公民、法人

或者其他组织申请查阅发生法律效力判决书、裁定书的，应当向作出该生效裁判的人民法院提出。申请应当以书面形式提出，并提供具体的案号或者当事人姓名、名称。

**Article 254** Where a citizen, legal person or other organization applies to consult a judgment or ruling that has taken effect, such citizen, legal person or other organization shall make an application to the people's court that made such judgment or ruling. The application shall be made in writing with the concrete case number or the names of the parties provided.

**第二百五十五条** 对于查阅判

决书、裁定书的申请，人民法院根据下列情形分别处理：

**Article 255** The people's court shall deal with applications for consulting judgments or rulings as follows depending on the following circumstances: 1. where the judgments or rulings have been announced to the public through an information network, the people's court shall guide the applicants to consult the same by themselves;

（一）判决书、裁定书已经通过信息网络向社会公开的，应当引导申请人自行查阅；

2. where the judgments or rulings are not announced to the public through an information network and the applications meet the relevant requirements, the people's court shall provide convenient consulting services in a timely manner;

（二）判决书、裁定书未通过信息网络向社会公开，且申请符合要求的，应当及时提供便捷的查阅服务；

3. where the judgments or rulings have not taken effect or have become invalid, the people's court shall not provide such judgments or rulings for consultation and inform the applicants of the same;

（三）判决书、裁定书尚未发生法律效力，或者已失去法律效力的，不提供查阅并告知申请人；

4. where the judgments or rulings have taken effect but were not made by the people's court itself, the people's court shall inform the applicants that the applicants may apply for consultation to the people's courts which made the valid judgments or rulings; and

（四）发生法律效力的判决书、裁定书不是本院作出的，应当告知申请人向作出生效裁判的人民法院

5. where the content to be consulted as applied for involves any national secret, trade secret or individual privacy, the people's court shall not approve the applications and inform the applicants of the same.

申请查阅；

（五）申请查阅的内容涉及国家秘密、商业秘密、个人隐私的，不予准许并告知申请人。

## 十一、简易程序

## Chapter XI Summary Procedure

**第二百五十六条** 民事诉讼法第一百六十条规定的简单民事案件中的事实清楚，是指当事人对争议的事实陈述基本一致，并能提供相应的证据，无须人民法院调查收集证据即可查明事实；权利义务关系明确是指能明确区分谁是责任的承担者，谁是权利的享有者；争议不大是指当事人对案件的是非、责任承担以及诉讼标的争执无原则分歧。

**Article 256** For a simple civil case specified in Article 157 of the Civil Procedure Law, where the factual statements of the dispute of both parties are basically consistent with each other, and the evidence they provide enables the people's court to identify the facts without investigation and collection of evidence, the facts are evident; where the bearer of obligations and the holder of rights are clearly defined, the rights and obligations are definite; where the parties have no fundamental divergence on the facts, undertaking of liabilities and the subject matter of the case, the disputes are minor.

**第二百五十七条** 下列案件，不适用简易程序：

- （一）起诉时被告下落不明的；
- （二）发回重审的；
- （三）当事人一方人数众多的；

**Article 257** The summary procedure does not apply to the following cases: 1. a case in which the defendant's whereabouts are unknown at the time of prosecution;

- 2. a case which is remanded for retrial;
- 3. a case with one party consisting of numerous persons;
- 4. a case to which the procedure for trial supervision is applied;



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(四) 适用审判监督程序的；

(五) 涉及国家利益、社会公共利益；

(六) 第三人起诉请求改变或者撤销生效判决、裁定、调解书的；

(七) 其他不宜适用简易程序的案件。

5. a case which involves national interests and public interests;

6. a case in which a third party files a lawsuit to change or revoke any valid judgment, ruling or mediation statement; and

7. other cases unsuitable for the application of the summary procedure.

**第二百五十八条** 适用简易程序审理的案件，审理期限到期后，有特殊情况需要延长的，经本院院长批准，可以延长审理期限。延长后的审理期限累计不得超过四个月。

人民法院发现案件不宜适用简易程序，需要转为普通程序审理的，应当在审理期限届满前作出裁定并将审判人员及相关事项书面通知双方当事人。

案件转为普通程序审理的，审理期限自人民法院立案之日计算。

**Article 258** As for a case to which the summary procedure applies, where it is necessary to extend the period of trial due to a special circumstance after expiration of such period, the period of trial may be extended upon approval by the president of the people's court. The period of trial after extension shall not exceed four months cumulatively. Where the people's court finds that the summary procedure is not suitable for a case and the ordinary procedure for trial shall apply instead of the summary procedure, it shall make a ruling before expiration of the period of trial and inform both parties of the judges and the relevant matters in writing.

Where the summary procedure is replaced with the ordinary procedure for the trial of a case, the period of trial shall start from the date on which the people's court puts the case on file.

**第二百五十九条** 当事人双方

**Article 259** Both parties may apply to the people's court for a method of court session, and the people's court shall decide

可就开庭方式向人民法院提出申请，由人民法院决定是否准许。经当事人双方同意，可以采用视听传输技术等方式开庭。

**whether to approve the application. Upon the consent of both parties, the people's court may open the court session by means of audio-visual technologies or otherwise.**

**第二百六十条** 已经按照普通程序审理的案件，在开庭后不得转为简易程序审理。

**Article 260 Cases that have been tried under the ordinary procedure shall not be tried under the summary procedure after the court session.**

**第二百六十一条** 适用简易程序审理案件，人民法院可以依照民事诉讼法第九十条、第一百六十二条的规定采取捎口信、电话、短信、传真、电子邮件等简便方式传唤双方当事人、通知证人和送达诉讼文书。

**Article 261 With regard to a case to which the summary procedure applies, the people's court may summon both parties, notify witnesses and serve litigation documents by convenient means of oral messages, calls, short messages, faxes, e-mails, or otherwise in accordance with the provisions of Article 90 or 162 of the Civil Procedure Law.** Where the receipt of a notice of court session served by convenient means is not confirmed by the parties or no other evidence proves that the parties have received such notice, the people's court shall not render a default judgment.

以简便方式送达的开庭通知，未经当事人确认或者没有其他证据证明当事人已经收到的，人民法院不得缺席判决。

A case to which the summary procedure applies shall be tried by a judge independently and recorded by a clerk.

适用简易程序审理案件，由审判员独任审判，书记员担任记录。

**第二百六十二条** 人民法庭制作的判决书、裁定书、调解书，必

**Article 262 The judgment, ruling and mediation statement made by a people's tribunal shall be affixed with the official seal of the people's court which shall not be replaced by that of the people's tribunal.**

须加盖基层人民法院印章，不得用  
人民法庭的印章代替基层人民法院  
的印章。

**第二百六十三条** 适用简易程序  
审理案件，卷宗中应当具备以下  
材料：

（一）起诉状或者口头起诉笔  
录；

（二）答辩状或者口头答辩笔  
录；

（三）当事人身份证明材料；

（四）委托他人代理诉讼的授权  
委托书或者口头委托笔录；

（五）证据；

（六）询问当事人笔录；

（七）审理（包括调解）笔录；

（八）判决书、裁定书、调解书  
或者调解协议；

（九）送达和宣判笔录；

**Article 263** The following materials shall be contained in the  
file of a case to which the summary procedure applies: 1. the  
statement of claim or records of an oral institution of an action;

2. the statement of defense or records of oral defense;

3. identity certifications of the parties;

4. a power of attorney in the case of entrustment of an agent ad  
litem or records of oral entrustment;

5. evidence;

6. records of questioning of the parties;

7. records of trial (including mediation);

8. judgment, ruling, mediation statement or mediation agreement;

9. records of service and announcement of judgment;

10. enforcement information;

11. receipt of litigation costs; and

12. written notice of application of the relevant procedure, where  
the trial is conducted in accordance with Article 165 of the Civil  
Procedure Law.

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(十)执行情况；

(十一)诉讼费收据；

(十二)适用民事诉讼法第一百六十五条规定审理的，有关程序适用的书面告知。

**第二百六十四条** 当事人双方根据民事诉讼法第一百六十条第二款规定约定适用简易程序的，应当在开庭前提出。口头提出的，记入笔录，由双方当事人签名或者捺印确认。

本解释第二百五十七条规定的案件，当事人约定适用简易程序的，人民法院不予准许。

**第二百六十五条** 原告口头起诉的，人民法院应当将当事人的姓名、性别、工作单位、住所、联系方式等基本信息，诉讼请求，事实及理由等准确记入笔录，由原告核对无误后签名或者捺印。对当事人提交的证据材料，应当出具收据。

**第二百六十六条** 适用简易程序

**Article 264** Where both parties agree to the application of the summary procedure in accordance with Paragraph 2 of Article 160 of the Civil Procedure Law, they shall bring forward this before the court session. If they bring forward this orally, it shall be written down in its records, which shall be confirmed by the signatures or fingerprints of both parties. Where the parties agree to the application of the summary procedure to a case specified in Article 257 of this Interpretation, the people's court shall not approve the agreement.

**Article 265** Where a plaintiff files a lawsuit orally, the people's court shall accurately write down in its records the basic information such as the name, gender, employer, domicile and contact information of the party, claims, facts, reasons and so on, which shall be confirmed upon examination by the plaintiff by signature or fingerprint thereof. The people's court shall issue a receipt for evidence materials submitted by the party.

**Article 266** The period for adducing evidence of a case to

序案件的举证期限由人民法院确定，也可以由当事人协商一致并经人民法院准许，但不得超过十五日。被告要求书面答辩的，人民法院可在征得其同意的基础上，合理确定答辩期间。

人民法院应当将举证期限和开庭日期告知双方当事人，并向当事人说明逾期举证以及拒不到庭的法律后果，由双方当事人在笔录和开庭传票的送达回证上签名或者捺印。

当事人双方均表示不需要举证期限、答辩期间的，人民法院可以立即开庭审理或者确定开庭日期。

**第二百六十七条** 适用简易程序审理案件，可以简便方式进行审理前的准备。

**第二百六十八条** 对没有委托律师、基层法律服务工作者代理诉讼的当事人，人民法院在庭审过程中可以对回避、自认、举证证明责任等相关内容向其作必要的解释或

**which the summary procedure applies may be determined by the people's court, or be agreed by the parties upon negotiation and be approved by the people's court, but it shall not exceed 15 days. Where a defendant is required to file a written defense, the people's court may reasonably determine the period to file a defense with the consent thereof. The people's court shall inform both parties of the period for adducing evidence and the date of the hearing and explain to the parties the legal consequences of delay in adducing evidence and refusal to appear in court. Both parties shall affix their signatures or fingerprints on records and the receipt of service of a summons for hearing.**

If both parties state that they do not need the period for adducing evidence or the period to file a defense, the people's court may immediately hold a hearing or set a date for the hearing.

**Article 267 Preparations before trial may be made in a convenient way for a case to which the summary procedure applies for trial.**

**Article 268 The people's court may give necessary explanations or descriptions of the relevant content such as recusal, self-admission and burden of proof to one party that does not have an entrusted lawyer or grassroots legal service worker to serve as an agent ad litem, and properly prompt the party to correctly exercise their litigation rights and fulfil the litigation obligations in the process of the court trial.**

者说明，并在庭审过程中适当提示当事人正确行使诉讼权利、履行诉讼义务。

**第二百六十九条** 当事人就案件适用简易程序提出异议，人民法院经审查，异议成立的，裁定转为普通程序；异议不成立的，裁定驳回。裁定以口头方式作出的，应当记入笔录。

转为普通程序的，人民法院应当将审判人员及相关事项以书面形式通知双方当事人。

转为普通程序前，双方当事人已确认的事实，可以不再进行举证、质证。

**Article 269** Where any party raises an objection to the application of the summary procedure to a case, and the people's court affirms upon examination that the objection is tenable, the people's court shall order the application of the ordinary procedure; any untenable objection shall be rejected. If the ruling is made orally, it shall be recorded in writing. In the case of a change to the ordinary procedure, the people's court shall inform both parties of the judges and the relevant matters in writing.

Before a change to the ordinary procedure, evidence need not be adduced or cross-examined any more in relation to facts confirmed by both parties.

**第二百七十条** 适用简易程序审理的案件，有下列情形之一的，人民法院在制作判决书、裁定书、调解书时，对认定事实或者裁判理由部分可以适当简化：

（一）当事人达成调解协议并需要制作民事调解书的；

**Article 270** Regarding cases to which the summary procedure applies for trial, the people's court may properly simplify the part of ascertained facts or judgment reasons in preparing a judgment, ruling or mediation statement in any of the following circumstances: 1. the parties reach a mediation agreement and it is necessary to prepare a civil mediation statement;

2. one party clearly admits all or part of the claims of the other party;

3. where a party requires the simplifying of the relevant content of

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(二) 一方当事人明确表示承认对方全部或者部分诉讼请求的；

a judgment or ruling of a case involving any trade secret or individual privacy, and the people's court believes that the relevant reasons are justifiable; and

(三) 涉及商业秘密、个人隐私的案件，当事人一方要求简化裁判文书中的相关内容，人民法院认为理由正当的；

4. both parties agree to the simplification.

(四) 当事人双方同意简化的。

## 十二、简易程序中的小额诉讼

## Chapter XII Small Claims to Which the Summary Procedure Applies

**第二百七十一条** 人民法院审理小额诉讼案件，适用民事诉讼法第一百六十五条的规定，实行一审终审。

**Article 271** In trying small claims, the people's court shall follow the provision of Article 165 of the Civil Procedure Law that the trial of first instance shall be final.

**第二百七十二条** 民事诉讼法第一百六十五条规定的各省、自治区、直辖市上年度就业人员年平均工资，是指已经公布的各省、自治区、直辖市上一年度就业人员年平均工资。在上一年度就业人员年平均工资公布前，以已经公布的最近年度就业人员年平均工资为准。

**Article 272** The average annual salary of the employees of all provinces, autonomous regions and municipalities directly under the Central Government in the previous year as provided for in Article 165 of the Civil Procedure Law refers to the published average annual salary of the employees of all provinces, autonomous regions and municipalities directly under the Central Government in the previous year. Before the publication of the average annual salary of the employees in the previous year, the published average annual salary of the employees in the most recent year shall prevail.

**第二百七十三条** 海事法院可

**Article 273** A maritime court may apply the procedure of small claims in hearing a maritime or maritime commerce case. The



以适用小额诉讼的程序审理海事、海商案件。案件标的额应当以实际受理案件的海事法院或者其派出法庭所在的省、自治区、直辖市上年度就业人员年平均工资为基数计算。

**subject amount of such case shall be computed based on the annual average salary of the employees of the province, autonomous region or municipality directly under the Central Government in the previous year, where the maritime court or its dispatched tribunal accepting such lawsuit is located.**

**第二百七十四条** 人民法院受理小额诉讼案件，应当向当事人告知该类案件的审判组织、一审终审、审理期限、诉讼费用交纳标准等相关事项。

**Article 274** In trying a small claim, the people's court shall inform the parties of the relevant matters such as trial organization, the rule that the first-instance decision shall be final, period of trial and payment standards of the litigation costs of such lawsuit.

**第二百七十五条** 小额诉讼案件的举证期限由人民法院确定，也可以由当事人协商一致并经人民法院准许，但一般不超过七日。

**Article 275** The period for adducing evidence of a small claim may be determined by the people's court or be agreed by the parties upon negotiation and then be approved by the people's court, but generally shall not exceed seven days. If the defendant requests to file a written defense, the people's court may reasonably determine the period to file the defense with the consent thereof, which shall not exceed 15 days.

被告要求书面答辩的，人民法院可以在征得其同意的基础上合理确定答辩期间，但最长不得超过十五日。

If the parties state that they do not need a period for adducing evidence or a period to file a defense in court, the people's court may immediately hold a hearing.

当事人到庭后表示不需要举证期限和答辩期间的，人民法院可立即开庭审理。

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**第二百七十六条** 当事人对小额诉讼案件提出管辖异议的，人民法院应当作出裁定。裁定一经作出即生效。

**Article 276** Where one party raises an objection to the jurisdiction over a small claim, the people's court shall make a ruling. The ruling shall come into force once made.

**第二百七十七条** 人民法院受理小额诉讼案件后，发现起诉不符合民事诉讼法第一百二十二条规定的起诉条件的，裁定驳回起诉。裁定一经作出即生效。

**Article 277** Where the people's court finds that the conditions for the institution of an action as provided for in Article 122 of the Civil Procedure Law are not met after accepting a small claim, it shall rule to dismiss the action. The ruling shall come into force once made.

**第二百七十八条** 因当事人申请增加或者变更诉讼请求、提出反诉、追加当事人等，致使案件不符合小额诉讼案件条件的，应当适用简易程序的其他规定审理。

**Article 278** Where the conditions of a small claim are not met when one party applies for addition or change of claims, files a counterclaim, adds one party and so on, other provisions on the summary procedure shall be followed for the trial. Where the ordinary procedure shall apply to the trial of a case specified in the preceding paragraph, the application of the ordinary procedure shall be ordered.

前款规定案件，应当适用普通程序审理的，裁定转为普通程序。

Prior to the application of other provisions on the summary procedure or the ordinary procedure, both parties may not adduce evidence or cross-examine evidence again in relation to facts already confirmed by them.

适用简易程序的其他规定或者普通程序审理前，双方当事人已确认的事实，可以不再进行举证、质证。

**第二百七十九条** 当事人对按照小额诉讼案件审理有异议的，应

**Article 279** Where a party objects to the trial of a case as a small claim, the objection shall be raised before the court session. If the objection is tenable upon examination by the people's court, other provisions on the summary procedure

当在开庭前提出。人民法院经审查，异议成立的，适用简易程序的其他规定审理或者裁定转为普通程序；异议不成立的，裁定驳回。裁定以口头方式作出的，应当记入笔录。

**shall apply or the ordinary procedure shall apply under a ruling; if the objection is untenable, the people's court shall reject the objection under a ruling. If the ruling is made orally, it shall be recorded in writing.**

**第二百八十条** 小额诉讼案件的裁判文书可以简化，主要记载当事人基本信息、诉讼请求、裁判主文等内容。

**Article 280** The judgment or ruling of a small claim may be simplified, and mainly records the basic information of the parties, claims, main body of the judgment or ruling and other content.

**第二百八十一条** 人民法院审理小额诉讼案件，本解释没有规定的，适用简易程序的其他规定。

**Article 281** Where the trial of a small claim by the people's court is not covered herein, other provisions of the summary procedure shall apply.

### 十三、公益诉讼

### Chapter XIII Public Interest Litigation

**第二百八十二条** 环境保护法、消费者权益保护法等法律规定的机关和有关组织对污染环境、侵害众多消费者合法权益等损害社会公共利益的行为，根据民事诉讼法第五十八条规定提起公益诉讼，符合下列条件的，人民法院应当受理：

**Article 282** Where organs and the relevant organizations stipulated by laws such as the Environmental Protection Law of the People's Republic of China and the Law of the People's Republic of China on the Protection of Consumer Rights and Interests file a public interest lawsuit against behavior damaging public interests such as polluting the environment and infringing the legitimate rights and interests of numerous consumers in accordance with Article 58 of the Civil Procedure Law, and the following conditions are met, the people's court shall accept the lawsuit: 1. there is a definite defendant;

2. there is a concrete claim;

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（一）有明确的被告；

3. there is preliminary evidence on any damage to public interests;  
and

（二）有具体的诉讼请求；

4. the lawsuit is within the scope of acceptance of civil lawsuits by  
the people's court and jurisdiction of the people's court with which  
the lawsuit is filed.

（三）有社会公共利益受到损害

的初步证据；

（四）属于人民法院受理民事诉

讼的范围和受诉人民法院管辖。

### 第二百八十三条 公益诉讼案

件由侵权行为地或者被告住所地中  
级人民法院管辖，但法律、司法解  
释另有规定的除外。

**Article 283 A public interest lawsuit shall be under the  
intermediate people's court in the place of the tort or domicile  
of the defendant, unless otherwise stipulated by laws and  
judicial interpretations.** A public interest lawsuit filed against  
pollution of the marine environment shall come under the  
jurisdiction of a maritime court in the place of occurrence of the  
pollution, damage or pollution prevention measures.

因污染海洋环境提起的公益诉  
讼，由污染发生地、损害结果地或  
者采取预防污染措施地海事法院管  
辖。

Where a public interest lawsuit is filed with two or more people's  
courts against the same tort respectively, the lawsuit shall come  
under the jurisdiction of the people's court which puts the lawsuit  
on file first. When necessary, the common superior people's court  
of such people's courts shall designate jurisdiction.

对同一侵权行为分别向两个以  
上人民法院提起公益诉讼的，由最  
先立案的人民法院管辖，必要时由  
它们的共同上级人民法院指定管  
辖。

### 第二百八十四条 人民法院受

理公益诉讼案件后，应当在十日内

**Article 284 After accepting a public interest lawsuit, the  
people's court shall inform the relevant competent  
administrative department in writing within ten days.**

书面告知相关行政主管部门。

**第二百八十五条** 人民法院受理公益诉讼案件后，依法可以提起诉讼的其他机关和有关组织，可以在开庭前向人民法院申请参加诉讼。人民法院准许参加诉讼的，列为共同原告。

**Article 285** After the people's court accepts a public interest lawsuit, other organs and the relevant organizations, which can file a lawsuit in accordance with the law, may apply to the people's court to participate in the lawsuit before the court session. If it is approved, the people's court shall accept them as co-plaintiffs.

**第二百八十六条** 人民法院受理公益诉讼案件，不影响同一侵权行为的受害人根据民事诉讼法第一百二十二条规定提起诉讼。

**Article 286** The acceptance of a public interest lawsuit by the people's court does not affect the filing of a lawsuit by a victim of the same tort in accordance with Article 122 of the Civil Procedure Law.

**第二百八十七条** 对公益诉讼案件，当事人可以和解，人民法院可以调解。

当事人达成和解或者调解协议后，人民法院应当将和解或者调解协议进行公告。公告期间不得少于三十日。

公告期满后，人民法院经审查，和解或者调解协议不违反社会公共利益的，应当出具调解书；和解或者调解协议违反社会公共利益

**Article 287** The parties to a public interest lawsuit may reach a reconciliation, and the people's court may mediate between the parties. After the parties enter into a reconciliation or mediation agreement, the people's court shall announce the reconciliation or mediation agreement. The announcement period shall be no less than 30 days.

Where the people's court believes upon examination that the reconciliation or mediation agreement does not violate public interests after expiration of the announcement period, it shall issue a mediation statement; where the reconciliation or mediation agreement violates public interests, it shall not issue a mediation statement, but shall continually try the case and make a judgment in accordance with the law.

的，不予出具调解书，继续对案件进行审理并依法作出裁判。

**第二百八十八条** 公益诉讼案件的原告在法庭辩论终结后申请撤诉的，人民法院不予准许。

**第二百八十九条** 公益诉讼案件的裁判发生法律效力后，其他依法具有原告资格的机关和有关组织就同一侵权行为另行提起公益诉讼的，人民法院裁定不予受理，但法律、司法解释另有规定的除外。

#### 十四、第三人撤销之诉

**第二百九十条** 第三人对已经发生法律效力的判决、裁定、调解书提起撤销之诉的，应当自知道或者应当知道其民事权益受到损害之日起六个月内，向作出生效判决、裁定、调解书的人民法院提出，并应当提供存在下列情形的证据材料：

（一）因不能归责于本人的事由未参加诉讼；

**Article 288** Where a defendant to a public interest lawsuit applies to withdraw the lawsuit after court deliberations, the people's court shall not approve the application.

**Article 289** After the judgment of a public interest lawsuit comes into force, where other organs and the relevant organizations with plaintiff qualification file another lawsuit against the same tort, the people's court shall rule not to accept the lawsuit, unless otherwise stipulated by laws and judicial interpretations.

#### Chapter XIV Action of a Third Party for Revocation

**Article 290** Where a third party files a lawsuit for revocation of a judgment, ruling or mediation statement which has come into force, the third party shall file the lawsuit with the people's court which made the valid judgment, ruling or mediation statement within six months after the third party knows or should have known that the civil rights and interests thereof are damaged, and shall provide evidential materials regarding any of the following circumstances: 1. the third party does not participate in the lawsuit due to any cause other than the third party per se;

2. the judgment, ruling, or mediation statement which has come into force is partially or wholly incorrect; and

3. wrong content of the judgment, ruling or mediation statement which has come into force damages the civil rights and interests thereof.

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（二）发生法律效力判决、裁定、调解书的全部或者部分内容错误；

（三）发生法律效力判决、裁定、调解书内容错误损害其民事权益。

**第二百九十一条** 人民法院应当在收到起诉状和证据材料之日起五日内送交对方当事人，对方当事人可以自收到起诉状之日起十日内提出书面意见。

人民法院应当对第三人提交的起诉状、证据材料以及对方当事人的书面意见进行审查。必要时，可以询问双方当事人。

经审查，符合起诉条件的，人民法院应当在收到起诉状之日起三十日内立案。不符合起诉条件的，应当在收到起诉状之日起三十日内裁定不予受理。

**第二百九十二条** 人民法院对第三人撤销之诉案件，应当组成合

**Article 291** The people's court shall hand over the statement of claim and evidential materials to the other party within five days after receiving the same, and the other party may give written opinions within ten days after receiving the statement of claim. The people's court shall examine the statement of claim and evidential materials submitted by a third party as well as written opinions of the other party. When necessary, the people's court may question both parties regarding the same.

If the conditions for the institution of an action are met upon examination, the people's court shall place the case on the docket within 30 days after receiving a statement of claim. If not, the people's court shall not accept the case within 30 days after receiving the statement of claim.

**Article 292** As for the lawsuit of a third party for revocation, the people's court shall form a collegiate bench to hold a hearing.



议庭开庭审理。

**第二百九十三条** 民事诉讼法第五十九条第三款规定的因不能归责于本人的事由未参加诉讼，是指没有被列为生效判决、裁定、调解书当事人，且无过错或者无明显过错的情形。包括：

（一）不知道诉讼而未参加的；

（二）申请参加未获准许的；

（三）知道诉讼，但因客观原因无法参加的；

（四）因其他不能归责于本人的事由未参加诉讼的。

**第二百九十四条** 民事诉讼法第五十九条第三款规定的判决、裁定、调解书的部分或者全部内容，是指判决、裁定的主文，调解书中处理当事人民事权利义务的结果。

**第二百九十五条** 对下列情形提起第三人撤销之诉的，人民法院不予受理：

**Article 293** The "failure to participate in the lawsuit due to cause(s) not attributable to such party" as provided for in Paragraph 3 of Article 59 of the Civil Procedure Law refers to the circumstances under which such party is not identified as a party in relation to a valid judgment, ruling or mediation statement, and does not have any fault or noticeable fault.

**Such circumstances include:** 1. the third party does not participate in the lawsuit because he does not know about the lawsuit;

2. the application thereof for participation in the lawsuit is not approved;

3. the third party knows about the lawsuit but cannot participate in the same for an objective reason; and

4. the third party does not participate in litigation due to cause(s) not attributable to the third party per se.

**Article 294** Part or all of a judgment, ruling or mediation statement as provided for in Paragraph 3 of Article 59 of the Civil Procedure Law refers to the main body of the judgment or ruling or results of resolution of civil rights and obligations of the parties in the mediation statement.

**Article 295** The people's court shall not accept the lawsuit of a third party filed for revocation of, or under the following circumstances: 1. the case to which the non-contentious procedure such as the special procedure, procedure for the recovery of debts, procedure for public invitation to assert claims or

- (一) 适用特别程序、督促程序、公示催告程序、破产程序等非讼程序处理的案件;
- (二) 婚姻无效、撤销或者解除婚姻关系等判决、裁定、调解书中涉及身份关系的内容;
- (三) 民事诉讼法第五十七条规定的未参加登记的权利人对代表人诉讼案件的生效裁判;
- (四) 民事诉讼法第五十八条规定的损害社会公共利益行为的受害人对公益诉讼案件的生效裁判。

bankruptcy procedure applies;

2. content related to an identity relationship in a judgment, ruling or mediation statement is about the invalidation of marriage, or revocation or cancellation of marital relationship;

3. a claimant who has not registered with the court as provided for in Article 57 of the Civil Procedure Law files a lawsuit for revocation of a valid judgment or ruling of a lawsuit which the representative participates in; and

4. a victim of an act jeopardizing public interest as provided for in Article 61 of the Civil Procedure Law files a lawsuit for the revocation of a valid judgment or ruling of a public interest lawsuit.

**第二百九十六条** 第三人提起撤销之诉，人民法院应当将该第三人列为原告，生效判决、裁定、调解书的当事人列为被告，但生效判决、裁定、调解书中没有承担责任的无独立请求权的第三人列为第三人。

**Article 296** Where a third party files a lawsuit for revocation, the people's court shall list the said third party as the plaintiff, the parties of a valid judgment, ruling or mediation statement as defendants, and the third party without an independent claim that does not bear liability under a valid judgment, ruling or mediation statement as a third party.

**第二百九十七条** 受理第三人撤销之诉案件后，原告提供相应担保，请求中止执行的，人民法院可

**Article 297** After receiving the lawsuit of a third party for revocation, where the plaintiff provides corresponding security and requests suspension of enforcement, the people's court shall approve the request.

以准许。

**第二百九十八条** 对第三人撤销或者部分撤销发生法律效力的判决、裁定、调解书内容的请求，人民法院经审理，按下列情形分别处理：

（一）请求成立且确认其民事权利的主张全部或部分成立的，改变原判决、裁定、调解书内容的错误部分；

（二）请求成立，但确认其全部或部分民事权利的主张不成立，或者未提出确认其民事权利请求的，撤销原判决、裁定、调解书内容的错误部分；

（三）请求不成立的，驳回诉讼请求。

对前款规定裁判不服的，当事人可以上诉。

原判决、裁定、调解书的内容未改变或者未撤销的部分继续有效。

**Article 298** As for the request of a third party to partially or wholly revoke a valid judgment, ruling or mediation statement, the people's court shall handle it upon trial as follows, separately, depending on the following circumstances: 1.

where the request is tenable and the claim for confirmation of civil rights of the third party is wholly or partially tenable, the wrong part of the original judgment, ruling or mediation statement shall be changed;

2. where the request is tenable but the claim for confirmation of civil rights of the third party is wholly or partially untenable or a request for confirmation of civil rights of the third party is not made, the wrong part of the original judgment, ruling or mediation statement shall be revoked; and

3. where the request is untenable, the claim shall be overruled.

In the case of objection to the judgment in the preceding paragraph, one party may institute an appeal.

The part not changed or revoked of the original judgment, ruling or mediation statement shall be valid continuously.

**第二百九十九条** 第三人撤销之诉案件审理期间，人民法院对生效判决、裁定、调解书裁定再审的，受理第三人撤销之诉的人民法院应当裁定将第三人的诉讼请求并入再审程序。但有证据证明原审当事人之间恶意串通损害第三人合法权益的，人民法院应当先行审理第三人撤销之诉案件，裁定中止再审查。

**Article 299** Where the people's court rules to retry a valid judgment, ruling or mediation statement within the period for trial of the lawsuit of a third party for revocation, the people's court accepting the lawsuit of a third party for revocation shall include the claim of the said third party in the retrial procedure. However, where there is evidence proving that the parties in the original trial maliciously colluded to damage the legitimate rights and interests of the third party, the people's court shall try the lawsuit of the third party for revocation first, and suspend the retrial procedure.

**第三百条** 第三人诉讼请求并入再审程序审理的，按照下列情形分别处理：

（一）按照第一审程序审理的，人民法院应当对第三人的诉讼请求一并审理，所作的判决可以上诉；

（二）按照第二审程序审理的，人民法院可以调解，调解达不成协议的，应当裁定撤销原判决、裁定、调解书，发回一审法院重审，重审时应当列明第三人。

**Article 300** Where the claim of a third party is included in the retrial procedure for trial: 1. if the procedure of first instance is applied to the trial, the people's court shall try the claim of the third party simultaneously, and an appeal may be instituted against a judgment made thereby; and

2. if the procedure of second instance is applied to the trial, the people's court may mediate. If mediation fails, the people's court shall revoke the original judgment, ruling or mediation statement, and remand the lawsuit to the court of first instance for retrial with the third party listed.

**第三百零一条** 第三人提起撤销之诉后，未中止生效判决、裁

**Article 301** Where a valid judgment, ruling or mediation statement is not suspended after a third party files a lawsuit for revocation, the enforcement court shall examine the

定、调解书执行的，执行法院对第三人依照民事诉讼法第二百三十四条规定提出的执行异议，应予审查。第三人不服驳回执行异议裁定，申请对原判决、裁定、调解书再审的，人民法院不予受理。

案外人对人民法院驳回其执行异议裁定不服，认为原判决、裁定、调解书内容错误损害其合法权益的，应当根据民事诉讼法第二百三十四条规定申请再审，提起第三人撤销之诉的，人民法院不予受理。

**objection to enforcement raised by the third party in accordance with Article 234 of the Civil Procedure Law. Where the third party is dissatisfied with the ruling to overrule the objection to enforcement, and applies for retrial of the original judgment, ruling or mediation statement, the people's court shall not accept the application.** Where an outsider is dissatisfied with the ruling of the people's court to overrule the objection to enforcement, believes that incorrect content of the original judgment, ruling or mediation statement damages the legitimate rights and interests thereof and such party shall apply for retrial in accordance with Article 234 of the Civil Procedure Law, and therefore files a lawsuit of a third party for revocation, the people's court shall not accept the lawsuit.

## 十五、执行异议之诉

## Chapter XV Lawsuit to Object to Enforcement

**第三百零二条** 根据民事诉讼法第二百三十四条规定，案外人、当事人对执行异议裁定不服，自裁定送达之日起十五日内向人民法院提起执行异议之诉的，由执行法院管辖。

**Article 302 According to Article 234 of the Civil Procedure Law, Where an outsider or a party to a case is dissatisfied with the ruling on an objection to enforcement and files a lawsuit to object to enforcement with the people's court within 15 days after service of the ruling, the lawsuit shall come under the jurisdiction of the enforcement court.**

**第三百零三条** 案外人提起执行异议之诉，除符合民事诉讼法第一百二十二条规定外，还应当具备

**Article 303 An outsider that files a lawsuit to object to enforcement shall conform to Article 122 of the Civil Procedure Law and meet the following conditions: 1. the application of the outsider's enforcement objection has been**

下列条件：

（一）案外人的执行异议申请已经被人民法院裁定驳回；

（二）有明确的排除对执行标的执行的诉讼请求，且诉讼请求与原判决、裁定无关；

（三）自执行异议裁定送达之日起十五日内提起。

人民法院应当在收到起诉状之日起十五日内决定是否立案。

rejected by the people's court;

2. there is a definite claim for removal of the enforcement of the subject matter of enforcement, and the claim is irrelevant to the original judgment or ruling; and

3. the lawsuit is filed within 15 days from the date of service of ruling of the objection to enforcement.

The people's court shall decide whether to place the case on the docket within 15 days from the date of receiving the statement of claim.

**第三百零四条** 申请执行人提起执行异议之诉，除符合民事诉讼法第一百二十二条规定外，还应当具备下列条件：

（一）依案外人执行异议申请，人民法院裁定中止执行；

（二）有明确的对执行标的继续执行的诉讼请求，且诉讼请求与原判决、裁定无关；

（三）自执行异议裁定送达之日起

**Article 304 To file a lawsuit to object to enforcement, the party applying for enforcement shall conform to Article 122 of the Civil Procedure Law and meet the following conditions:** 1. the people's court suspends the enforcement in a ruling according to an outsider's application to object to enforcement;

2. there is a definite claim for the continuous enforcement of the subject matter of enforcement, and the claim is irrelevant to the original judgment or ruling; and

3. the lawsuit is filed within 15 days from the date of service of ruling on the objection to enforcement.

The people's court shall decide whether to place the case on the docket within 15 days from the date of receiving the statement of claim.

起十五日内提起。

人民法院应当在收到起诉状之日起十五日内决定是否立案。

**第三百零五条** 案外人提起执行异议之诉的，以申请执行人为被告。被执行人反对案外人异议的，被执行人为共同被告；被执行人不反对案外人异议的，可以列被执行人为第三人。

**Article 305** Where an outsider files a lawsuit to object to enforcement, the party applying for enforcement shall be the defendant. Where the party subject to enforcement opposes the objection of the outsider, the party subject to enforcement shall be a co-defendant; where the party subject to enforcement does not oppose the objection of the outsider, the party subject to enforcement may be identified as a third party.

**第三百零六条** 申请执行人提起执行异议之诉的，以案外人为被告。被执行人反对申请执行人主张的，以案外人和被执行人为共同被告；被执行人不反对申请执行人主张的，可以列被执行人为第三人。

**Article 306** Where a party applying for enforcement files a lawsuit to object to enforcement, the outsider shall be the defendant. Where the party subject to enforcement opposes the claim of the party applying for enforcement, the outsider and the party subject to enforcement shall be co-defendants; where the party subject to enforcement does not oppose the claim of the party applying for enforcement, the party subject to enforcement may be identified as a third party.

**第三百零七条** 申请执行人对中止执行裁定未提起执行异议之诉，被执行人提起执行异议之诉的，人民法院告知其另行起诉。

**Article 307** Where a party applying for enforcement does not file a lawsuit to object to enforcement against the enforcement suspension ruling but a party subject to enforcement files a lawsuit to object to enforcement, the people's court shall inform the party subject to enforcement that the party subject to enforcement shall file another lawsuit.

**第三百零八条** 人民法院审理执行异议之诉案件，适用普通程序。

**Article 308** The people's court shall apply the ordinary procedure to the trial of a lawsuit to object to enforcement.



**第三百零九条** 案外人或者申请执行人提起执行异议之诉的，案外人应当就其对执行标的享有足以排除强制执行的民事权益承担举证证明责任。

**Article 309** Where an outsider or a party applying for enforcement files a lawsuit to object to enforcement, the outsider shall bear the burden of proof for the civil rights and interests thereof sufficient to exempt such party from compulsory enforcement of the subject matter of enforcement.

**第三百一十条** 对案外人提起的执行异议之诉，人民法院经审理，按照下列情形分别处理：

**Article 310** The people's court shall, after hearing the lawsuit filed by an outsider to object to enforcement, deal with the case separately depending on the following circumstances: 1. if the outsider enjoys civil rights and interests sufficient to preclude the enforcement of the subject matter of the case, the court shall rule not to enforce the said subject matter involved; and 2. if the outsider does not enjoy civil rights and interests sufficient to preclude the enforcement of the subject matter of the case, the court shall rule to dismiss the claim.

（一）案外人就执行标的享有足以排除强制执行的民事权益的，判决不得执行该执行标的；

Where the outsider makes a claim to confirm the rights thereof simultaneously, the people's court may make a consolidated decision in the judgment.

（二）案外人就执行标的的不享有足以排除强制执行的民事权益的，判决驳回诉讼请求。

案外人同时提出确认其权利的诉讼请求的，人民法院可以在判决中一并作出裁判。

**第三百一十一条** 对申请执行人提起的执行异议之诉，人民法院经审理，按照下列情形分别处理：

**Article 311** With regard to a lawsuit to object to enforcement filed by a party applying for enforcement, upon trial, the people's court shall: 1. approve the enforcement of the said subject matter if the outsider does not enjoy civil rights and interests sufficient to preclude the enforcement of the subject matter of the case; and 2. decide to reject the claim if the outsider enjoys civil rights and

（一）案外人就执行标的的不享有足以排除强制执行的民事权益的，

判决准许执行该执行标的；

（二）案外人就执行标的享有足以排除强制执行的民事权益的，判决驳回诉讼请求。

interests sufficient to preclude the enforcement of the subject matter of the case.

**第三百一十二条** 对案外人执行异议之诉，人民法院判决不得对执行标的执行的，执行异议裁定失效。

对申请执行人执行异议之诉，人民法院判决准许对该执行标的执行的，执行异议裁定失效，执行法院可以根据申请执行人的申请或者依职权恢复执行。

**Article 312** Where the people's court rules not to enforce the subject matter involved regarding the lawsuit to object to enforcement by an outsider, the ruling on the objection to enforcement shall become invalid. Where the people's court approves the enforcement of the subject matter involved regarding the lawsuit to object to enforcement by a party applying for enforcement, the ruling on the objection to enforcement shall become invalid, and the enforcement court may resume the enforcement upon the request of the party applying for enforcement or ex officio.

**第三百一十三条** 案外人执行异议之诉审理期间，人民法院不得对执行标的进行处分。申请执行人请求人民法院继续执行并提供相应担保的，人民法院可以准许。

被执行人与案外人恶意串通，通过执行异议、执行异议之诉妨害执行的，人民法院应当依照民事诉讼法第一百一十六条规定处理。申

**Article 313** Within the period of trial of the lawsuit filed by an outsider to object to enforcement, the people's court shall not dispose of the subject matter of enforcement. Where a party applying for enforcement requests the people's court to continue enforcement and provides corresponding security, the people's court shall approve the request. Where a party subject to enforcement and an outsider maliciously collude to hinder enforcement via the objection to enforcement and a lawsuit to object to enforcement, the people's court shall handle it in accordance with Article 116 of the Civil Procedure Law. Where a party applying for enforcement suffers damage thereby, such party may file a lawsuit to require the party subject to enforcement and the outsider to compensate such party.

最高人民法院关于适用《中华人民共和国民事诉讼法》的解释（2022 修正）

请执行人因此受到损害的，可以提起诉讼要求被执行人、案外人赔偿。

**第三百一十四条** 人民法院对执行标的裁定中止执行后，申请执行人在法律规定的期间内未提起执行异议之诉的，人民法院应当自起诉期限届满之日起七日内解除对该执行标的采取的执行措施。

**Article 314** Where a party applying for enforcement fails to file a lawsuit to object to enforcement within the period stipulated by the law after the people's court suspends the enforcement of the ruling on the subject matter of enforcement, the people's court shall remove the enforcement measure taken against the subject matter of enforcement within seven days from the date of expiration of the period of the lawsuit.

## 十六、二审程序

## Chapter XVI Procedure of Second Instance

**第三百一十五条** 双方当事人和第三人都提起上诉的，均列为上诉人。人民法院可以依职权确定二审程序中当事人的诉讼地位。

**Article 315** Where both parties and any third party respectively institute an appeal, all of them are appellants. The people's court may determine ex officio the litigation status of the parties in the second trial proceedings.

**第三百一十六条** 民事诉讼法第一百七十三条、第一百七十四条规定的对方当事人包括被上诉人和原审其他当事人。

**Article 316** The other party as provided for in Articles 173 and 174 of the Civil Procedure Law includes the appellee and other parties in the original trial.

**第三百一十七条** 必要共同诉讼人的一人或者部分人提起上诉的，按下列情形分别处理：

（一）上诉仅对与对方当事人之

**Article 317** Where one or more required co-litigants file an appeal petition, relevant matters shall be dealt with separately in any of the following ways: 1. if the appeal concerns only disputes over the allocation of rights and obligations with the other party and involves no interest of other co-litigants, the other party shall be the appellee and any co-litigant that does not institute an appeal shall have standing in the appeal as any such co-litigant

间权利义务分担有意见，不涉及其他共同诉讼人利益的，对方当事人为被上诉人，未上诉的同一方当事人依原审诉讼地位列明；

（二）上诉仅对共同诉讼人之间权利义务分担有意见，不涉及对方当事人利益的，未上诉的同一方当事人为被上诉人，对方当事人依原审诉讼地位列明；

（三）上诉对双方当事人之间以及共同诉讼人之间权利义务承担有意见的，未提起上诉的其他当事人均为被上诉人。

does in the original action;

2. where the appeal concerns only disputes over the allocation of rights and obligations among the co-litigants and involves no interest of the other party, any co-litigant that does not institute an appeal shall be the appellee and the other party shall have standing in the appeal as the other party does in the original action; and

3. where the appeal concerns any disputes over the allocation of rights and obligations between both parties as well as among the co-litigants, any other party that does not institute an appeal shall be the appellee.

**第三百一十八条** 一审宣判时或者判决书、裁定书送达时，当事人口头表示上诉的，人民法院应告知其必须在法定上诉期间内递交上诉状。未在法定上诉期间内递交上诉状的，视为未提起上诉。虽递交上诉状，但未在指定的期限内交纳上诉费的，按自动撤回上诉处理。

**Article 318** Where the judgment for a case is rendered in the proceedings at first instance or the judgment or ruling for the case is served, and a party appeals orally, the people's court concerned shall inform the party that the party must file an appeal petition within the statutory period for appeal. If the party fails to file an appeal petition within such statutory period, it shall be deemed that the party does not institute an appeal. If the party files an appeal petition but does not pay appeal costs within a prescribed period, the people's court will deem that the party has automatically withdrawn the appeal.

**第三百一十九条** 无民事行为能力人、限制民事行为能力人的法

**Article 319** The statutory agent of any person without capacity for civil conduct or with limited capacity for civil conduct may institute an appeal on behalf of any such person.

定代理人，可以代理当事人提起上诉。

**第三百二十条** 上诉案件的当事人死亡或者终止的，人民法院依法通知其权利义务承继者参加诉讼。

需要终结诉讼的，适用民事诉讼法第一百五十四条规定。

**Article 320** Where a party to an appeal dies or is terminated, the people's court shall notify the successor thereto in respect of rights and obligations that the successor shall participate in the litigation in accordance with the law. If it is necessary to end the litigation, Article 151 of the Civil Procedure Law applies.

**第三百二十一条** 第二审人民法院应当围绕当事人的上诉请求进行审理。

当事人没有提出请求的，不予审理，但一审判决违反法律禁止性规定，或者损害国家利益、社会公共利益、他人合法权益的除外。

**Article 321** The people's court of second instance shall try a case by focusing on the appeals of one party. Where the party does not make a request, the people's court shall not hear the case, unless the judgment of first instance violates any prohibitive provision of the law, or damages national interests, public interests or the legitimate rights and interests of others.

**第三百二十二条** 开庭审理的上诉案件，第二审人民法院可以依照民事诉讼法第一百三十六条第四项规定进行审理前的准备。

**Article 322** The people's court of second instance may make pretrial preparations for an appeal to be tried in accordance with Item 4 of Article 136 of the Civil Procedure Law.

**第三百二十三条** 下列情形，可以认定为民事诉讼法第一百七十七条第一款第四项规定的严重违反

**Article 323** Any of the following circumstances may be identified as a serious violation of the statutory procedure as provided for in Item 4, Paragraph 1 of Article 170 of the Civil Procedure Law: 1. the composition of a trial organization is illegal;

法定程序：

（一）审判组织的组成不合法

的；

（二）应当回避的审判人员未回

避的；

（三）无诉讼行为能力人未经法

定代理人代为诉讼的；

（四）违法剥夺当事人辩论权利

的。

2. a judge who shall withdraw from a case fails to do so;

3. no statutory agent acts on behalf of a person without capacity for civil conduct; and

4. one party is illegally deprived of the right thereof to debate.

**第三百二十四条** 对当事人在第一审程序中已经提出的诉讼请求，原审人民法院未作审理、判决的，第二审人民法院可以根据当事人自愿的原则进行调解；调解不成的，发回重审。

**Article 324** Where, for any claims that have been presented by any party in the procedure of first instance, the people's court that originally hears the case fails to review and make a judgment for any such claims, the people's court of second instance may conduct mediation for the parties on a voluntary basis and in the case of a failure in mediation, remand the case for retrial to the people's court that originally heard the case.

**第三百二十五条** 必须参加诉讼的当事人或者有独立请求权的第三人，在第一审程序中未参加诉讼，第二审人民法院可以根据当事人自愿的原则予以调解；调解不成的，发回重审。

**Article 325** Where any party or any third party with an independent claim that must participate in litigation fails to do so in the procedure of first instance, the people's court of second instance may conduct mediation for the parties on a voluntary basis and in the case of a failure in mediation, remand the case for retrial to the people's court that originally heard the case.

**第三百二十六条** 在第二审程序中，原审原告增加独立的诉讼请求或者原审被告提出反诉的，第二审人民法院可以根据当事人自愿的原则就新增加的诉讼请求或者反诉进行调解；调解不成的，告知当事人另行起诉。

双方当事人同意由第二审人民法院一并审理的，第二审人民法院可以一并裁判。

**第三百二十七条** 一审判决不准离婚的案件，上诉后，第二审人民法院认为应当判决离婚的，可以根据当事人自愿的原则，与子女抚养、财产问题一并调解；调解不成的，发回重审。

双方当事人同意由第二审人民法院一并审理的，第二审人民法院可以一并裁判。

**第三百二十八条** 人民法院依照第二审程序审理案件，认为依法不应由人民法院受理的，可以由第二审人民法院直接裁定撤销原裁

**Article 326** Where, in the procedure of second instance, the plaintiff in the original case adds any independent claims or the defendant thereto files any counterclaims, the people's court of second instance may conduct mediation for both parties on a voluntary basis with respect to such claims or counterclaims and, in the case of a failure in mediation, inform the parties to file another lawsuit. Where both parties agree to the consolidated trial by the people's court of second instance, the people's court of second instance may make a consolidated judgment or ruling.

**Article 327** Where, for a divorce case in which a judgment of a court of first instance disallows the divorce, and the people's court of second instance deems that a divorce judgment should be made, the people's court of second instance may, on a voluntary basis, conduct mediation for both parties with respect to the divorce matter as well as childrearing and property issues and, in the case of a failure in mediation, remand the case for retrial to the people's court that originally heard the case. Where both parties agree to the consolidated trial by the people's court of second instance, the people's court of second instance may make a consolidated judgment or ruling.

**Article 328** Where in hearing a case as per the procedure of second instance, the people's court of second instance deems that the case, as provided in the law, should not be accepted by any people's court, the people's court of second instance may directly revoke the original judgment or ruling and dismiss the case.



判，驳回起诉。

**第三百二十九条** 人民法院依照第二审程序审理案件，认为第一审人民法院受理案件违反专属管辖规定的，应当裁定撤销原裁判并移送有管辖权的人民法院。

**Article 329** Where the people's court tries a case as per the procedure of second instance, and believes that the acceptance of the case by the people's court of first instance violates the provision on exclusive jurisdiction, the people's court shall revoke the original judgment or ruling and refer the case to the people's court of competent jurisdiction.

**第三百三十条** 第二审人民法院查明第一审人民法院作出的不予受理裁定有错误的，应当在撤销原裁定的同时，指令第一审人民法院立案受理；查明第一审人民法院作出的驳回起诉裁定有错误的，应当在撤销原裁定的同时，指令第一审人民法院审理。

**Article 330** Where the people's court of second instance finds that any non-acceptance ruling made by the people's court of first instance was erroneous, the people's court of second instance shall, while revoking any such ruling, instruct the people's court of first instance to accept and put the case on file; where the people's court of second instance finds that any dismissal ruling made by the people's court of first instance was erroneous, the people's court of second instance shall, while revoking any such ruling, instruct the people's court of first instance to hear the case in question.

**第三百三十一条** 第二审人民法院对下列上诉案件，依照民事诉讼法第一百七十六条规定可以不开庭审理：

**Article 331** The people's court of second instance may, in accordance with Article 176 of the Civil Procedure Law, hear the following appeals without a court session: 1. any appeal in which one party is dissatisfied with non-acceptance, objection to jurisdiction or the ruling to overrule the lawsuit;

（一）不服不予受理、管辖权异

2. any appeal in which claims brought forward by any party are explicitly groundless;

议和驳回起诉裁定的；

3. any appeal in which findings of facts are clear in the original judgment or ruling but the application of law is erroneous; and

（二）当事人提出的上诉请求明显不能成立的；

4. any appeal in which the original judgment is made in violation of any statutory procedure, and the case should be remanded for retrial to the court that originally tried the case.

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（三）原判决、裁定认定事实清

楚，但适用法律错误的；

（四）原判决严重违反法定程

序，需要发回重审的。

**第三百三十二条** 原判决、裁定认定事实或者适用法律虽有瑕疵，但裁判结果正确的，第二审人民法院可以在判决、裁定中纠正瑕疵后，依照民事诉讼法第一百七十七条第一款第一项规定予以维持。

**Article 332** Where findings of facts in the original judgment or ruling or the application of law are or is defective but judgment or ruling results are correct, the people's court of second instance may uphold the original judgment or ruling in accordance with Item 1, Paragraph 1 of Article 177 of the Civil Procedure Law, after correcting the errors in the judgment or ruling.

**第三百三十三条** 民事诉讼法第一百七十七条第一款第三项规定的基本事实，是指用以确定当事人主体资格、案件性质、民事权利义务等对原判决、裁定的结果有实质性影响的事实。

**Article 333** The fundamental facts as provided for in Item 3, Paragraph 1 of Article 177 of the Civil Procedure Law refer to facts having a substantial impact on the results of the original judgment or ruling, which can be used to determine the subject qualifications of the parties, case nature, civil rights and obligations, and so on.

**第三百三十四条** 在第二审程序中，作为当事人的法人或者其他组织分立的，人民法院可以直接将分立后的法人或者其他组织列为共同诉讼人；合并的，将合并后的法人或者其他组织列为当事人。

**Article 334** In the procedure of second instance, if a legal person or any other organization as a party to the case is divided, the people's court may directly list the legal person or any other organization after the division as a joint litigant. In case of merger, the legal person or other organization resulting from the merger shall be listed as a party.

**第三百三十五条** 在第二审程序中，当事人申请撤回上诉，人民法院经审查认为一审判决确有错误，或者当事人之间恶意串通损害国家利益、社会公共利益、他人合法权益的，不应准许。

**Article 335** Where in the procedure of second instance, a party applies for withdrawal of an appeal, and the people's court believes that the judgment of first instance is indeed erroneous upon examination, or the parties maliciously collude to harm national interests, public interests or the legitimate rights and interests of others, the people's court shall not approve the application.

**第三百三十六条** 在第二审程序中，原审原告申请撤回起诉，经其他当事人同意，且不损害国家利益、社会公共利益、他人合法权益的，人民法院可以准许。准许撤诉的，应当一并裁定撤销一审裁判。

**Article 336** Where in the procedure of second instance, the plaintiff to the original case applies for withdrawal of an action, and the application has been agreed to by the other party, and does not harm national interests, public interests or the legitimate rights and interests of others, the people's court may approve the application. Where the withdrawal of the action is approved, the people's court shall revoke the judgment or ruling of first instance. Where the plaintiff to the original case files an action again after withdrawing the action in the procedure of second instance, the people's court shall not accept the action.

原审原告在第二审程序中撤回起诉后重复起诉的，人民法院不予受理。

**第三百三十七条** 当事人在第二审程序中达成和解协议的，人民法院可以根据当事人的请求，对双方达成的和解协议进行审查并制作调解书送达当事人；因和解而申请撤诉，经审查符合撤诉条件的，人民法院应予准许。

**Article 337** Where the parties reached a reconciliation agreement in the procedure of second instance, the people's court may, upon the request of both parties, review such reconciliation agreement and make and serve a mediation statement on both parties; where an application is filed to withdraw the case in question due to the conclusion of such a settlement agreement and the requirements for withdrawing a case are met after examination, the people's court shall consent to such application.

**第三百三十八条** 第二审人民

**Article 338** The people's court of second instance may

法院宣告判决可以自行宣判，也可以委托原审人民法院或者当事人所在地人民法院代行宣判。

**pronounce a judgment by itself or by the people's court that originally heard the case or the people's court at the domicile of the party on its behalf.**

**第三百三十九条** 人民法院审理对裁定的上诉案件，应当在第二审立案之日起三十日内作出终审裁定。有特殊情况需要延长审限的，由本院院长批准。

**Article 339** Where the people's court tries an appeal against a ruling, it shall make a final ruling within 30 days from the date when the case of second instance is put on file. Where the period of trial needs to be extended in a special circumstance, the extension shall be approved by the president of the people's court.

**第三百四十条** 当事人在第一审程序中实施的诉讼行为，在第二审程序中对该当事人仍具有拘束力。

**Article 340** The procedural acts conducted by a party in the procedure of first instance shall still be binding upon the party in the procedure of second instance. When a party overturns the litigation act carried out during the proceedings of first instance, the people's court shall order him/her to give reasons. If the reason is not tenable, support shall not be given.

当事人推翻其在第一审程序中实施的诉讼行为时，人民法院应当责令其说明理由。理由不成立的，不予支持。

## **Chapter XVII Special Procedure**

### **十七、特别程序**

**第三百四十一条** 宣告失踪或者宣告死亡案件，人民法院可以根据申请人的请求，清理下落不明人的财产，并指定案件审理期间的财产管理人。公告期满后，人民法院

**Article 341** For a case involving the declaration of a person as missing or dead, the people's court may, upon the request of the applicant concerned, liquidate the property of such person whose whereabouts are unknown and designate an administrator for the property within the period of the trial of the case. Where the people's court delivers a judgment after the expiration of the public announcement period, declaring the person as missing, the people's court shall, in accordance

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判决宣告失踪的，应当同时依照民法典第四十二条的规定指定失踪人的财产代管人。

**with Article 42 of the Civil Code, designate an administrator for the property of the missing person at the same time.**

**第三百四十二条** 失踪人的财产代管人经人民法院指定后，代管人申请变更代管的，比照民事诉讼法特别程序的有关规定进行审理。申请理由成立的，裁定撤销申请人的代管人身份，同时另行指定财产代管人；申请理由不成立的，裁定驳回申请。

**Article 342** Where, after an administrator for the property of a missing person is designated by the people's court, the administrator applies to be replaced, the case shall be heard by reference to the relevant provisions of the special procedure specified in the Civil Procedure Law. Where the application reasons are tenable, the people's court shall remove the applicant from the position of administrator and designate another administrator simultaneously; where the application reasons are untenable, the people's court shall dismiss such application. Where any other interested party related to the missing person applies to replace the administrator, the people's court shall inform any such interested party that such party shall file an action against the administrator and hear the case as per the ordinary procedure.

失踪人的其他利害关系人申请变更代管的，人民法院应当告知其以原指定的代管人为被告起诉，并按普通程序进行审理。

**第三百四十三条** 人民法院判决宣告公民失踪后，利害关系人向人民法院申请宣告失踪人死亡，自失踪之日起满四年的，人民法院应当受理，宣告失踪的判决即是该公民失踪的证明，审理中仍应依照民事诉讼法第一百九十二条规定进行公告。

**Article 343** Where, after a citizen is declared by the people's court as missing, any interested party applies to the people's court for a declaration that the citizen is dead after four years have elapsed since the date following the one on which the citizen went missing, the people's court shall entertain the case, and the judgment that declares the citizen to be missing shall be the evidence that the citizen is missing, and a public announcement shall also be made in the hearing of the case in accordance with Article 192 of the Civil Procedure Law.

最高人民法院关于适用《中华人民共和国民事诉讼法》的解释（2022 修正）

**第三百四十四条** 符合法律规定的多个利害关系人提出宣告失踪、宣告死亡申请的，列为共同申请人。

**Article 344** Where several interested parties in conformity with the relevant legal provisions make an application for declaration that a person is missing or dead, such interested parties shall be co-applicants.

**第三百四十五条** 寻找下落不明人的公告应当记载下列内容：

**Article 345** A public announcement in search of a person whose whereabouts are unknown shall record the following content: 1. the respondent shall declare the concrete address and contact information thereof to the court accepting the application within the prescribed period. Otherwise, the respondent will be declared missing or dead; 2. any person knowing the current living situation of the respondent shall report the situation that he/she knows to the court accepting the application within the public announcement period.

（一）被申请人应当在规定期间内向受理法院申报其具体地址及其联系方式。否则，被申请人将被宣告失踪、宣告死亡；

（二）凡知悉被申请人生存现状的人，应当在公告期间内将其所知情况向受理法院报告。

**第三百四十六条** 人民法院受理宣告失踪、宣告死亡案件后，作出判决前，申请人撤回申请的，人民法院应当裁定终结案件，但其他符合法律规定的利害关系人加入程序要求继续审理的除外。

**Article 346** Where the applicant withdraws the application after the people's court accepts the case of declaration of a person as missing or dead but before the people's court makes a judgment, the people's court shall rule to terminate the case, unless any other interested party in conformity with the relevant legal provisions joins the procedure and requires a continuous trial.

**第三百四十七条** 在诉讼中，当事人的利害关系人或者有关组织提出该当事人不能辨认或者不能完

**Article 347** Where an interested party related to a party or the organization concerned claims in the litigation that such party is unable to recognize or fully recognize his/her own conduct and requests that the party be declared incapable of civil conduct or restricted civil conduct, the interested party or the



全辨认自己的行为，要求宣告该当事人无民事行为能力或者限制民事行为能力能力的，应由利害关系人或者有关组织向人民法院提出申请，由受诉人民法院按照特别程序立案审理，原诉讼中止。

**organization concerned shall apply to the people's court, which shall docket and try the case under the special procedure, and the original litigation shall be suspended.**

**第三百四十八条** 认定财产无主案件，公告期间有人对财产提出请求的，人民法院应当裁定终结特别程序，告知申请人另行起诉，适用普通程序审理。

**Article 348** For a case involving the determination of any property as ownerless, if any person presents a claim to any such property during the public announcement period, the people's court shall terminate the special procedure and inform the applicant to file another lawsuit and the ordinary procedure shall apply to such lawsuit.

**第三百四十九条** 被指定的监护人不服居民委员会、村民委员会或者民政部门指定，应当自接到通知之日起三十日内向人民法院提出异议。经审理，认为指定并无不当的，裁定驳回异议；指定不当的，判决撤销指定，同时另行指定监护人。判决书应当送达异议人、原指定单位及判决指定的监护人。

**Article 349** Any designated guardian who is dissatisfied with the designation by the neighborhood committee, villagers' committee or authority of civil affairs shall raise an objection with the people's court within 30 days from the date on which the relevant notice is received. Where the people's court deems that the designation is appropriate upon hearing, the people's court shall dismiss the objection; where the designation is not appropriate, the people's court shall cancel the designation and designate another guardian at the same time. The judgment shall be served on the person raising an objection, the entity that originally made the designation and the guardian designated in the judgment. Where a party directly applies to the people's court for designation of a guardian in accordance with Paragraph 1 of Article 31 of the Civil Code, the people's court shall hear the case in accordance with the special procedures, and designate the guardian in the judgment. The judgment shall be served on the applicant and the guardian designated in the judgment.

有关当事人依照民法典第三十一条第一款规定直接向人民法院申请指定监护人的，适用特别程序审



理，判决指定监护人。判决书应当送达申请人、判决指定的监护人。

**第三百五十条** 申请认定公民无民事行为能力或者限制民事行为能力的案件，被申请人没有近亲属的，人民法院可以指定经被申请人住所地的居民委员会、村民委员会或者民政部门同意，且愿意担任代理人的个人或者组织为代理人。

没有前款规定的代理人的，由被申请人住所地的居民委员会、村民委员会或者民政部门担任代理人。

代理人可以是一人，也可以是同一顺序中的两人。

**第三百五十一条** 申请司法确认调解协议的，双方当事人应当本人或者由符合民事诉讼法第六十一条规定的代理人依照民事诉讼法第二百零一条的规定提出申请。

**第三百五十二条** 调解组织自行开展的调解，有两个以上调解组

**Article 350** As for a case concerning the application for identification of a citizen without capacity for civil conduct or with limited capacity for civil conduct, where the respondent does not have a close relative, the people's court may designate any individual or organization that is approved by the neighborhood committee, villagers' committee or authority of civil affairs at the domicile of the respondent and is willing to act as the agent to act as the agent thereof. Where there is no agent specified in the preceding paragraph, the neighborhood committee, villagers' committee or authority of civil affairs at the domicile of the respondent shall work as the agent thereof.

The agent may be one person, or two persons in the same order.

**Article 351** Where the parties to a mediation agreement apply for judicial confirmation of such agreement, they shall file an application in person or by an agent conforming to the provisions of Article 61 of the Civil Procedure Law in accordance with the provisions of Article 201 of the Civil Procedure Law.

**Article 352** With regard to a mediation conducted by two or more mediation organizations themselves, the people's court in the location of any of the said mediation organizations conforming to the provisions of Article 201 of the Civil

织参与的，符合民事诉讼法第二百零一条规定的各调解组织所在地人民法院均有管辖权。

双方当事人可以共同向符合民事诉讼法第二百零一条规定的其中一个有管辖权的人民法院提出申请；双方当事人共同向两个以上有管辖权的人民法院提出申请的，由最先立案的人民法院管辖。

**第三百五十三条** 当事人申请司法确认调解协议，可以采用书面形式或者口头形式。当事人口头申请的，人民法院应当记入笔录，并由当事人签名、捺印或者盖章。

**第三百五十四条** 当事人申请司法确认调解协议，应当向人民法院提交调解协议、调解组织主持调解的证明，以及与调解协议相关的财产权利证明等材料，并提供双方当事人的身份、住所、联系方式等基本信息。

当事人未提交上述材料的，人民法院应当要求当事人限期补交。

**Procedures Law shall have jurisdiction over it.** Both parties may jointly make an application to the people's court in the location of any of the said mediation organizations conforming to the provisions of Article 201 of the Civil Procedures Law and having jurisdiction; where both parties jointly make an application to two or more people's courts with jurisdiction, the application shall come under the jurisdiction of the people's court which places the case on the docket first.

**Article 353** The parties may apply for judicial confirmation of a mediation agreement in writing or orally. If a party makes an application orally, the people's court shall record the application in writing, to which the party shall affix his/her signature, fingerprint or seal.

**Article 354** The party applying for judicial confirmation of a mediation agreement shall submit to the people's court the mediation agreement, certification on a mediation organization presiding over mediation, certification on property rights related to the mediation agreement and other materials, and provide the basic information of both parties such as the identity, domicile and contact information. If the party fails to submit the aforesaid materials, the people's court shall require the party to supplement them within a prescribed period.

**第三百五十五条** 当事人申请司法确认调解协议，有下列情形之一的，人民法院裁定不予受理：

（一）不属于人民法院受理范围的；

（二）不属于收到申请的人民法院管辖的；

（三）申请确认婚姻关系、亲子关系、收养关系等身份关系无效、有效或者解除的；

（四）涉及适用其他特别程序、公示催告程序、破产程序审理的；

（五）调解协议内容涉及物权、知识产权确权的。

人民法院受理申请后，发现有上述不予受理情形的，应当裁定驳回当事人的申请。

**第三百五十六条** 人民法院审查相关情况时，应当通知双方当事人共同到场对案件进行核实。

**Article 355** Where a party applies for judicial confirmation of a mediation agreement in any of the following circumstances, the people's court shall rule not to accept the application: 1.

the application is not within the scope of acceptance of the people's court;

2. the application is not under the jurisdiction of the people's court receiving the application;

3. the application is made for confirming the voidness, validity or dissolution of identity relationships such as marital relationship, parenthood and adoptive relationship;

4. the application shall be subject to other special procedure, procedure for public invitation to assert claims or bankruptcy procedure for trial; and

5. content of the mediation agreement involves the confirmation of real rights or intellectual property rights.

Where the people's court finds that there is any of the aforesaid non-acceptance circumstances after accepting an application, it shall dismiss the application of the party.

**Article 356** In examining the relevant conditions, the people's court shall notify both parties to be present jointly to verify the case. Where the people's court believes upon examination that any statement or any certification material made or provided by one party is insufficient, incomplete or doubtful, it may require the party to supplement the statement or certification material within a

人民法院经审查，认为当事人的陈述或者提供的证明材料不充分、不完备或者有疑义的，可以要求当事人限期补充陈述或者补充证明材料。必要时，人民法院可以向调解组织核实有关情况。

prescribed period. When necessary, the people's court may review the relevant conditions with any mediation organization.

**第三百五十七条** 确认调解协议的裁定作出前，当事人撤回申请的，人民法院可以裁定准许。

当事人无正当理由未在限期内补充陈述、补充证明材料或者拒不接受询问的，人民法院可以按撤回申请处理。

**Article 357** Where the party withdraws an application before a ruling on confirmation of a mediation agreement is made, the people's court may approve the application. If the party fails to supplement any statement or certification material within the prescribed period or refuses to receive inquiries without any justifiable reasons, the people's court may deem that the party has withdrawn the application.

**第三百五十八条** 经审查，调解协议有下列情形之一的，人民法院应当裁定驳回申请：

- （一）违反法律强制性规定的；
- （二）损害国家利益、社会公共利益、他人合法权益的；
- （三）违背公序良俗的；
- （四）违反自愿原则的；

**Article 358** The people's court shall dismiss the application if the mediation agreement is involved in any of the following circumstances as found upon examination: 1. where the mediation agreement is in violation of any compulsory provision of the law;

- 2. where the mediation agreement impairs national interests, public interests or the legitimate rights and interests of others;
- 3. where the mediation agreement goes against public order and good custom;
- 4. where the mediation agreement breaches the principle of free will;
- 5. where the content of the mediation agreement is unclear; or

(五) 内容不明确的;

6. where the mediation agreement is involved in any other circumstance under which judicial confirmation cannot be conducted.

(六) 其他不能进行司法确认的

情形。

### **第三百五十九条** 民事诉讼法

第二百零三条规定的担保物权人，包括抵押权人、质权人、留置权人；其他有权请求实现担保物权的人，包括抵押人、出质人、财产被留置的债务人或者所有权人等。

**Article 359** The holders of security interests as provided for in Article 203 of the Civil Procedure Law include mortgagees, pledgees and lienees; other persons entitled to claim the realization of security right include mortgagors, pledgers and debtors or owners whose property is created with lien.

### **第三百六十条** 实现票据、仓

单、提单等有权利凭证的权利质权案件，可以由权利凭证持有人住所地人民法院管辖；无权利凭证的权利质权，由出质登记地人民法院管辖。

**Article 360** Cases involving the realization of the pledge of rights with documents of title such as bills, warehouse warrants and bills of lading may come under the jurisdiction of the people's court in the domicile of the holder of such documents of title; cases on the pledge of rights without documents of title shall come under the jurisdiction of the people's court in the place of registration of such pledge.

### **第三百六十一条** 实现担保物

权案件属于海事法院等专门人民法院管辖的，由专门人民法院管辖。

**Article 361** Where cases involving the realization of security interests come under the jurisdiction of the specialized people's courts including maritime courts, such cases shall come under the jurisdiction of the specialized people's courts.

### **第三百六十二条** 同一债权的

担保物有多个且所在地不同，申请人分别向有管辖权的人民法院申请实现担保物权的，人民法院应当依

**Article 362** Where there are multiple collaterals at different locations for the same claim and an applicant applies to the people's courts of competent jurisdiction for realization of security interests respectively, the people's courts shall accept the applications in accordance with the law.

法受理。

**第三百六十三条** 依照民法典第三百九十二条的规定，被担保的债权既有物的担保又有人的担保，当事人对实现担保物权的顺序有约定，实现担保物权的申请违反该约定的，人民法院裁定不予受理；没有约定或者约定不明的，人民法院应当受理。

**Article 363** According to Article 392 of the Civil Code, in the event that the secured claims involve both collateral and guarantor, and the parties agree upon the order of realization of security interests, if the application for realization of security interests goes against the said agreement, the people's court shall not accept the application; in the absence of such agreement or the agreement is unclear, the people's court shall accept the application.

**第三百六十四条** 同一财产上设立多个担保物权，登记在先的担保物权尚未实现的，不影响后顺位的担保物权人向人民法院申请实现担保物权。

**Article 364** Where multiple security interest are created over the same property and the security interest registered first has not been realized, it will not affect the application of the holder of security interests in the latter sequence to the people's court for realization of security interests.

**第三百六十五条** 申请实现担保物权，应当提交下列材料：

（一）申请书。申请书应当记明申请人、被申请人的姓名或者名称、联系方式等基本信息，具体的请求和事实、理由；

（二）证明担保物权存在的材料，包括主合同、担保合同、抵押

**Article 365** The following materials shall be submitted for an application for realization of security interests: 1. application in writing, which shall record the basic information of the applicant and the respondent such as the name and contact information, concrete claims, facts and causes;

2. materials proving the existence of security interests, including master contract, security contract, mortgage registration certification or certificate of other rights and documents of title of pledge of rights or pledge right registration certificate;

3. materials proving the satisfaction of conditions for security interests;

登记证明或者其他权利证书，权利质权的权利凭证或者质权出质登记证明等；

（三）证明实现担保物权条件成就的材料；

（四）担保财产现状的说明；

（五）人民法院认为需要提交的其他材料。

4. description of current conditions of secured property; and

5. other materials necessary to be submitted as deemed by the people's court.

**第三百六十六条** 人民法院受理申请后，应当在五日内向被申请人送达申请书副本、异议权利告知书等文书。

被申请人有异议的，应当在收到人民法院通知后的五日内向人民法院提出，同时说明理由并提供相应的证据材料。

**Article 366** After accepting an application, the people's court shall serve the copy of the application in writing, notice of objection right and other documents on the respondent within five days. For any objection to the application, the respondent shall raise the objection with the people's court within five days after receiving a notice from the people's court, with the reasons stated and corresponding evidential materials provided.

**第三百六十七条** 实现担保物权案件可以由审判员一人独任审查。担保财产标的额超过基层人民法院管辖范围的，应当组成合议庭进行审查。

**Article 367** A case on realization of security interests may be examined by a single judge. Where the subject amount of secured property goes beyond the scope under the jurisdiction of a basic people's court, a collegiate bench shall be formed for its examination.



**第三百六十八条** 人民法院审查实现担保物权案件，可以询问申请人、被申请人、利害关系人，必要时可以依职权调查相关事实。

**Article 368** In examining a case involving realization of security interests, the people's court may question the applicant, the respondent and any interested party, and investigate the relevant facts ex officio when necessary.

**第三百六十九条** 人民法院应当就主合同的效力、期限、履行情况，担保物权是否有效设立、担保财产的范围、被担保的债权范围、被担保的债权是否已届清偿期等担保物权实现的条件，以及是否损害他人合法权益等内容进行审查。

**Article 369** The people's court shall examine the conditions for realization of security interests such as the force, term and performance of the master contract, security interests effectively established or not, scope of secured property, scope of secured claims, and secured claims entering into a term of payment or not, as well as content as to whether the legitimate rights and interests of others have been damaged. Where the respondent or any interested party raises an objection, the people's court shall examine the objections on a consolidated basis.

被申请人或者利害关系人提出异议的，人民法院应当一并审查。

**第三百七十条** 人民法院审查后，按下列情形分别处理：

**Article 370** After examination, the people's court shall: 1. approve the auction or sale of the secured property if the parties have no substantial dispute over the realization of the security interests and conditions for realization of the security interests are satisfied;

（一）当事人对实现担保物权无实质性争议且实现担保物权条件成就的，裁定准许拍卖、变卖担保财产；

2. approve the auction or sales of the undisputed part of the secured property if the parties have a substantial dispute over the partial realization of security interests; or

（二）当事人对实现担保物权有部分实质性争议的，可以就无争议部分裁定准许拍卖、变卖担保财

3. dismiss the application and notify the applicant to file a lawsuit with the people's court if the parties have a substantial dispute over the realization of security interests.

产；

（三）当事人对实现担保物权有实质性争议的，裁定驳回申请，并告知申请人向人民法院提起诉讼。

**第三百七十一条** 人民法院受理申请后，申请人对担保财产提出保全申请的，可以按照民事诉讼法关于诉讼保全的规定办理。

**Article 371** Where an applicant makes an application for preservation of secured property after the people's court accepts the application, the people's court may handle it in accordance with the provisions on preservation in litigation in the Civil Procedure Law.

**第三百七十二条** 适用特别程序作出的判决、裁定，当事人、利害关系人认为有错误的，可以向作出该判决、裁定的人民法院提出异议。人民法院经审查，异议成立或者部分成立的，作出新的判决、裁定撤销或者改变原判决、裁定；异议不成立的，裁定驳回。

**Article 372** For a judgment or ruling made under the special procedure, if any party or any interested party believes that it is wrong, it may raise an objection with the people's court which made the said judgment or ruling. Where the people's court finds, upon examination, that the objection is tenable wholly or partially, it shall make a new judgment or dismiss or change the original judgment or ruling; the people's court shall dismiss the objection if it is untenable. Where a party is dissatisfied with the ruling made by the people's court on the confirmation of a mediation agreement or approval of realization of security interests, the party shall raise an objection within 15 days from the date of receiving the ruling; where an interested party is dissatisfied, the interested party shall raise an objection within six months from the date when such party knows or should have known about the infringement upon the civil rights and interests thereof.

对人民法院作出的确认调解协议、准许实现担保物权的裁定，当事人有异议的，应当自收到裁定之日起十五日内提出；利害关系人有异议的，自知道或者应当知道其民事权益受到侵害之日起六个月内提出。

## 十八、审判监督程序

## Chapter XVIII Procedure for Trial Supervision

**第三百七十三条** 当事人死亡或者终止的，其权利义务承继者可以根据民事诉讼法第二百零六条、第二百零八条的规定申请再审。

**Article 373** Where a party dies or is terminated, its successor in rights and obligations may apply for a retrial under Articles 206 and 208 of the Civil Procedure Law. Where a party assigns the claim affirmed by the judgment or mediation statement after such judgment or mediation statement enters into force, the people's court shall not accept the application for a retrial by the assignee of the claim dissatisfied with such judgment or mediation statement.

判决、调解书生效后，当事人将判决、调解书确认的债权转让，债权受让人对该判决、调解书不服申请再审的，人民法院不予受理。

**第三百七十四条** 民事诉讼法第二百零六条规定的人数众多的一方当事人，包括公民、法人和其他组织。

**Article 374** A party consisting of numerous persons as set forth in Article 206 of the Civil Procedure Law includes citizens, legal persons and other organizations. A case where both parties thereto are citizens as set forth in Article 206 of the Civil Procedure Law refers to the case where both the plaintiff and the defendant are citizens.

民事诉讼法第二百零六条规定的当事人双方为公民的案件，是指原告和被告均为公民的案件。

**第三百七十五条** 当事人申请再审，应当提交下列材料：

**Article 375** The party applying for a retrial shall submit the following materials: 1. retrial request, together with copies thereof according to the number of persons against whom the application is made and other parties to the original trial;

（一）再审申请书，并按照被申请人和原审其他当事人的人数提交副本；

2. proof of identity: if the applicant for a retrial is a natural person the business license, organization code certificate, or certificate of identity of the legal representative or principal responsible person; if the applicant for a retrial is a legal person or other organization, a power of attorney and proof of identity, if another person is

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（二）再审申请人是自然人的，应当提交身份证明；再审申请人是法人或者其他组织的，应当提交营业执照、组织机构代码证书、法定代表人或者主要负责人身份证明书。委托他人代为申请的，应当提交授权委托书和代理人身份证明；

（三）原审判决书、裁定书、调解书；

（四）反映案件基本事实的主要证据及其他材料。

前款第二项、第三项、第四项规定的材料可以是与原件核对无异的复印件。

authorized to file the application on its behalf;

3. judgment, written ruling or mediation statement of the original trial; and

4. main evidence and other materials that reflect the basic facts of the case.

The materials as provided in Items 2, 3 and 4 of the preceding paragraph may be photocopies verified as identical to the original.

**第三百七十六条** 再审申请书应当记明下列事项：

（一）再审申请人与被申请人及原审其他当事人的基本信息；

（二）原审人民法院的名称，原审裁判文书案号；

**Article 376 The retrial request shall specify:** 1. the basic information of the applicant for a retrial and the respondent and other parties to the original trial;

2. the name of the people's court that originally tried the case, and docket number of the original trial judgment document;

3. specific claims for a retrial; and

4. the statutory situations and specific facts and reasons for the request of a retrial.

The retrial request shall specify that the people's court requested a retrial, and be signed, sealed or stamped by the applicant for a

(三)具体的再审请求；

(四)申请再审的法定情形及具体事实、理由。

再审申请书应当明确申请再审的人民法院，并由再审申请人签名、捺印或者盖章。

retrial.

**第三百七十七条** 当事人一方人数众多或者当事人双方为公民的案件，当事人分别向原审人民法院和上一级人民法院申请再审且不能协商一致的，由原审人民法院受理。

**Article 377** If the number of a party is large or both parties are citizens, and the parties apply to the people's court of first instance and the people's court of higher level respectively for retrial and cannot reach a consensus, the people's court of first instance shall accept the case.

**第三百七十八条** 适用特别程序、督促程序、公示催告程序、破产程序等非讼程序审理的案件，当事人不得申请再审。

**Article 378** No party may request a retrial in respect of a case which is tried by applying the special procedure, procedure for the recovery of debts, procedure for public invitation to assert claims, bankruptcy proceedings or other non-litigious proceedings.

**第三百七十九条** 当事人认为发生法律效力的不予受理、驳回起诉的裁定错误的，可以申请再审。

**Article 379** Any party who believes that an inadmissibility or dismissal ruling which is legally effective is erroneous may request a retrial.

**第三百八十条** 当事人就离婚案件中的财产分割问题申请再审，如涉及判决中已分割的财产，人民

**Article 380** Where a party requests a retrial in respect of the property division issues in a divorce case, the people's court shall review such request under Article 207 of the Civil Procedure Law if it involves the property that has been

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法院应当依照民事诉讼法第二百零七条的规定进行审查，符合再审条件的，应当裁定再审；如涉及判决中未作处理的夫妻共同财产，应当告知当事人另行起诉。

**divided in the judgment, and shall order a retrial if the eligibility for a retrial is met; if it involves matrimonial community property which is not settled in the judgment, the party shall be instructed to file a suit separately.**

**第三百八十一条** 当事人申请再审，有下列情形之一的，人民法院不予受理：

（一）再审申请被驳回后再次提出申请；

（二）对再审判决、裁定提出申请的；

（三）在人民检察院对当事人的申请作出不予提出再审检察建议或者抗诉决定后又提出申请的。

前款第一项、第二项规定情形，人民法院应当告知当事人可以向人民检察院申请再审检察建议或者抗诉，但因人民检察院提出再审检察建议或者抗诉而再审作出的判决、裁定除外。

**Article 381 A retrial requested by a party is inadmissible in the people's court in any of the following circumstances:** 1. where the retrial request is filed again after it is rejected;

2. where the request is made against the retrial judgment or ruling; or

3. where the request is filed again after the people's procuratorate makes a decision to not raise a procuratorial proposal for a retrial or file a protest in respect of such request.

For the circumstances specified in Items 1 and 2 in the preceding paragraph, the people's court shall inform such party that it may request the people's procuratorate for a procuratorial proposal for a retrial or for a protest, except for a judgment or ruling made in the retrial as a result of the procuratorial proposal for a retrial raised or the protest filed by the people's procuratorate.

**第三百八十二条** 当事人对已

**Article 382 A party shall request a retrial of a mediation**

经发生法律效力的调解书申请再审，应当在调解书发生法律效力后六个月内提出。

**statement that has been legally effective within six months after the mediation statement becomes legally effective.**

**第三百八十三条** 人民法院应当自收到符合条件的再审申请书等材料之日起五日内向再审申请人发送受理通知书，并向被申请人及原审其他当事人发送应诉通知书、再审申请书副本等材料。

**Article 383** The people's court shall give a notice of acceptance to the applicant for a retrial within 5 days from the date that the eligible retrial request and other materials have been received, and send the copies of notice of response, retrial request and other materials to the respondent and other parties to the original trial.

**第三百八十四条** 人民法院受理申请再审案件后，应当依照民事诉讼法第二百零七条、第二百零八条、第二百一十一条等规定，对当事人主张的再审事由进行审查。

**Article 384** After the case of a request for a retrial is admitted by the people's court, the people's court shall review under Article 207, Article 208, Article 211 and other provisions of the Civil Procedure Law the grounds for a retrial as claimed by the party.

**第三百八十五条** 再审申请人提供的新的证据，能够证明原判决、裁定认定基本事实或者裁判结果错误的，应当认定为民事诉讼法第二百零七条第一项规定的情形。

**Article 385** Where new evidence submitted by the applicant for a retrial can establish that the finding of basic facts, or results rendered, in the original judgment or ruling was erroneous, the circumstances in Item 1 of Article 207 of the Civil Procedure Law shall be found in existence. For evidence which complies with the preceding paragraph, the people's court shall order the applicant for a retrial to explain the reasons for its late submission of such evidence; in the case of refusal to explain the reasons or that the reasons given are not tenable, Paragraph 2, Article 68 of the Civil Procedure Law and Article 102 of this Interpretation will be applicable.

对于符合前款规定的证据，人民法院应当责令再审申请人说明其逾期提供该证据的理由；拒不说明理由或者理由不成立的，依照民事



诉讼法第六十八条第二款和本解释

第一百零二条的规定处理。

### 第三百八十六条 再审申请人

证明其提交的新的证据符合下列情形之一的，可以认定逾期提供证据的理由成立：

（一）在原审庭审结束前已经存在，因客观原因于庭审结束后才发现的；

（二）在原审庭审结束前已经发现，但因客观原因无法取得或者在规定的期限内不能提供的；

（三）在原审庭审结束后形成，无法据此另行提起诉讼的。

再审申请人提交的证据在原审中已经提供，原审人民法院未组织质证且未作为裁判根据的，视为逾期提供证据的理由成立，但原审人民法院依照民事诉讼法第六十八条规定不予采纳的除外。

**Article 386** The reasons for late submission of evidence can be found tenable if the applicant for a retrial proves that the new evidence submitted by it meets any of the following circumstances: 1. where such evidence already existed before the end of the original trial hearing, but was discovered only after the end of such hearing for objective reasons;

2. where such evidence was found before the end of the original trial hearing, but was not available for objective reasons or could not be submitted within the prescribed period; or

3. where such evidence came into existence after the end of the original trial hearing and cannot be used as basis to file a separate suit.

Where the evidence submitted by the applicant for a retrial was already submitted at the original trial and was neither subject to cross-examination, nor used as a basis for any judgment or ruling, by the people's court that originally tried the case, the reasons for late submission are deemed to be tenable, except that they are inadmissible in the people's court that originally tried the case under Article 68 of the Civil Procedure Law.

### 第三百八十七条 当事人对原

判决、裁定认定事实的主要证据在

**Article 387** Where a party refuses to express in the original trial the cross-examination comments on the main evidence for the finding of facts in the original judgment or ruling or

原审中拒绝发表质证意见或者质证中未对证据发表质证意见的，不属于民事诉讼法第二百零七条第四项规定的未经质证的情形。

**does not express in the cross-examination process the cross-examination comments on the evidence, such circumstances do not fall within the meaning of "not cross-examined" set forth in Item 4, Article 207 of the Civil Procedure Law.**

**第三百八十八条** 有下列情形之一的，导致判决、裁定结果错误的，应当认定为民事诉讼法第二百零七条第六项规定的原判决、裁定适用法律确有错误：

（一）适用的法律与案件性质明显不符的；

（二）确定民事责任明显违背当事人约定或者法律规定的；

（三）适用已经失效或者尚未施行的法律的；

（四）违反法律溯及力规定的；

（五）违反法律适用规则的；

（六）明显违背立法原意的。

**Article 388** The original judgment or ruling shall be found to be definitely erroneous in applying the law under Item 6, Article 207 of the Civil Procedure Law if the results of the judgment or ruling is definitely erroneous due to any of the following circumstances: 1. where the applicable law and the nature of the case are obviously inconsistent with each other;

2. where the determination of civil liability is obviously contrary to the agreement between the parties or the law;

3. where law that has expired or has not been implemented is applied;

4. where the retroactive provisions of law are violated;

5. where the applicable rules of law are violated; or

6. where it is obviously contrary to the legislative intent.

**第三百八十九条** 原审开庭过程中有下列情形之一的，应当认定为民事诉讼法第二百零七条第九项

**Article 389** One of the following circumstances during the first trial session shall be considered as depriving a party of the right to debate as stipulated in Item 9, Article 207 of the Civil Procedure Law: 1. where the party is not allowed to express

规定的剥夺当事人辩论权利：

arguments;

（一）不允许当事人发表辩论

2. where a hearing should be held but is not held;

意见的；

3. where a copy of the statement of claim or a copy of the appeal petition is served in violation of the law, thereby preventing the party from exercising the right to debate; or

（二）应当开庭审理而未开庭

审理的；

4. where the party's right to debate is otherwise denied in violation of the law.

（三）违反法律规定送达起诉

状副本或者上诉状副本，致使当事

人无法行使辩论权利的；

（四）违法剥夺当事人辩论权

利的其他情形。

### 第三百九十条 民事诉讼法第

二百零七条第十一项规定的诉讼请求，包括一审诉讼请求、二审上诉请求，但当事人未对一审判决、裁定遗漏或者超出诉讼请求提起上诉的除外。

**Article 390** The claims set forth in Item 11, Article 207 of the Civil Procedure Law include the claims of first instance and appeals of second instance, except that no party appeals against omission or excess of the claims in the judgment or order of first instance.

### 第三百九十一条 民事诉讼法

第二百零七条第十二项规定的法律文书包括：

**Article 391** The legal instruments set forth in Item 12, Article 207 of the Civil Procedure Law include: 1. legally effective judgments, written rulings or mediation statements;

2. legally effective arbitral awards; and

（一）发生法律效力的判决书、

3. notarized documents of obligation that are enforceable.

裁定书、调解书；

(二) 发生法律效力的仲裁裁决

书；

(三) 具有强制执行效力的公证

债权文书。

### 第三百九十二条 民事诉讼法

第二百零七条第十三项规定的审判人员审理该案件时有贪污受贿、徇私舞弊、枉法裁判行为，是指已经由生效刑事法律文书或者纪律处分决定所确认的行为。

**Article 392** The embezzlement, bribery, engagement in malpractice for personal benefits or rendering of a judgment that perverts the course of law by a member of the judges in trying a case as set forth in Item 13, Article 207 of the Civil Procedure Law refers to an act which is affirmed by an effective criminal legal instrument or disciplinary decision.

### 第三百九十三条 当事人主张

的再审事由成立，且符合民事诉讼法和本解释规定的申请再审条件的，人民法院应当裁定再审。

**Article 393** Where the reasons for a retrial as claimed by a party are tenable and the eligibility for a retrial as set forth in the Civil Procedure Law and this Interpretation is met, the people's court shall order a retrial. Where the reasons for a retrial as claimed by a party are not tenable, or a party requests retrial beyond the statutory period for the request for a retrial, or the statutory scope of retrial is exceeded, or the eligibility for request for a retrial under the Civil Procedure Law and this Interpretation is otherwise not met, the people's court shall dismiss the request for a retrial.

当事人主张的再审事由不成立，或者当事人申请再审超过法定申请再审期限、超出法定再审事由范围等不符合民事诉讼法和本解释规定的申请再审条件的，人民法院应当裁定驳回再审申请。

### 第三百九十四条 人民法院对

已经发生法律效力的判决、裁定、

**Article 394** Where the people's court lawfully decides to retry a legally effective judgment, written ruling or mediation statement, such people's court shall also state in the retrial ruling that the original judgment, ruling or mediation

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调解书依法决定再审，依照民事诉讼法第二百一十三条规定，需要中止执行的，应当在再审裁定中同时写明中止原判决、裁定、调解书的执行；情况紧急的，可以将中止执行裁定口头通知负责执行的人民法院，并在通知后十日内发出裁定书。

**statement are suspended if it is required to suspend the enforcement under Article 213 of the Civil Procedure Law; in the case of emergency, the ruling to suspend the enforcement may be given by verbal notice to the people's court responsible for the enforcement, and a ruling will be issued within 10 days after the notice.**

**第三百九十五条** 人民法院根据审查案件的需要决定是否询问当事人。新的证据可能推翻原判决、裁定的，人民法院应当询问当事人。

**Article 395** The people's court shall decide whether to question the parties in light of the need to examine the case. If new evidence may overturn the original judgment or written ruling, the people's court shall question the parties concerned.

**第三百九十六条** 审查再审申请期间，被申请人及原审其他当事人依法提出再审申请的，人民法院应当将其列为再审申请人，对其再审事由一并审查，审查期限重新计算。经审查，其中一方再审申请人主张的再审事由成立的，应当裁定再审。各方再审申请人主张的再审事由均不成立的，一并裁定驳回再审申请。

**Article 396** If the respondent and other parties to the original trial lawfully file a request for a retrial during the period for review of a request for a retrial, the people's court shall list the same as the applicants for a retrial, review their reasons for a retrial together, with the period for review to be recalculated. If, upon review, the reasons for a retrial as claimed by one of the applicants for a retrial are tenable, a retrial shall be ordered. Where none of the reasons for a retrial as claimed by the applicants for a retrial are tenable, the request for a retrial shall be dismissed.

**第三百九十七条** 审查再审申请期间，再审申请人申请人民法院委托鉴定、勘验的，人民法院不予准许。

**Article 397** Where the applicant for a retrial requests the people's court for entrustment of an expert examination or inquest during the review of a request for a retrial, the people's court will not grant permission.

**第三百九十八条** 审查再审申请期间，再审申请人撤回再审申请的，是否准许，由人民法院裁定。

**Article 398** Where the applicant for a retrial withdraws the request during the review of the request for a retrial, the people's court will rule as to whether it is permitted to do so. Where, upon being summoned, the applicant for a retrial refuses to answer questions without justified reasons, it may be deemed to have withdrawn the request for a retrial.

再审申请人经传票传唤，无正当理由拒不接受询问的，可以按撤回再审申请处理。

**第三百九十九条** 人民法院准许撤回再审申请或者按撤回再审申请处理后，再审申请人再次申请再审的，不予受理，但有民事诉讼法第二百零七条第一项、第三项、第十二项、第十三项规定情形，自知道或者应当知道之日起六个月内提出的除外。

**Article 399** It is prohibited for the applicant for a retrial to file a request for a retrial again after the people's court permits withdrawal of a request for a retrial or after it is treated as a withdrawal of the request for a retrial, except where such request is filed within 6 months from the date that it is known or ought to be known in the circumstances in Items 1, 3, 12 and 13 of Article 207 of the Civil Procedure Law.

**第四百条** 再审申请审查期间，有下列情形之一的，裁定终结审查：

（一）再审申请人死亡或者终

**Article 400** The review will be ruled to be terminated in the case of any of the following circumstances during the review of the request for a retrial: 1. where the applicant for a retrial dies or the applying party is terminated, having no successor in rights and obligations, or the request for a retrial is renounced by its successor in rights and obligations; 2. where, in the case of an action of performance, the respondent

止，无权利义务承继者或者权利义务承继者声明放弃再审申请的；

（二）在给付之诉中，负有给付义务的被申请人死亡或者终止，无可供执行的财产，也没有应当承担义务的人的；

（三）当事人达成和解协议且已履行完毕的，但当事人在和解协议中声明不放弃申请再审权利的除外；

（四）他人未经授权以当事人名义申请再审的；

（五）原审或者上一级人民法院已经裁定再审的；

（六）有本解释第三百八十一条第一款规定情形的。

with the obligation of performance dies or is terminated, with no property available for enforcement and no person who shall assume such obligations;

3. where a settlement agreement is entered into between the parties and has been fulfilled, unless the parties declare in the settlement agreement that the right to request a retrial is not waived;

4. where another person requests a retrial in the name of the party without authorization;

5. where the people's court that originally tried the case or the people's court at higher level has ordered a retrial; or

6. where there are circumstances as set forth in Paragraph 1, Article 381 of this Interpretation.

**第四百零一条** 人民法院审理再审案件应当组成合议庭开庭审理，但按照第二审程序审理，有特殊情况或者双方当事人已经通过其他方式充分表达意见，且书面同意

**Article 401** In a retrial case, the people's court shall form a collegial bench to hold hearings, except if it is tried in second-instance proceedings, there are special circumstances or both parties have otherwise fully expressed their opinions and agreed in writing to have no hearing. A default judgment may be entered if the conditions thereof are met.



不开庭审理的除外。

符合缺席判决条件的，可以缺席判决。

#### 第四百零二条 人民法院开庭

审理再审案件，应当按照下列情形分别进行：

（一）因当事人申请再审的，先由再审申请人陈述再审请求及理由，后由被申请人答辩、其他原审当事人发表意见；

（二）因抗诉再审的，先由抗诉机关宣读抗诉书，再由申请抗诉的当事人陈述，后由被申请人答辩、其他原审当事人发表意见；

（三）人民法院依职权再审，有申诉人的，先由申诉人陈述再审请求及理由，后由被申诉人答辩、其他原审当事人发表意见；

（四）人民法院依职权再审，没有申诉人的，先由原审原告或者原审上诉人陈述，后由原审其他当事

#### Article 402 In hearing a retrial case, the people's court shall do so respectively as follows:

1. in the case of a retrial upon a party's request, the hearing will start with a statement of the retrial request and reasons therefor by the applicant for a retrial, followed by a response by the respondent and expressing of opinions by other parties to the original trial;

2. in the case of a retrial upon protest, the hearing will start with reading the motion of protest by the protest authority, followed by a statement by the protesting party and then a response by the respondent and expressing of opinions by other parties to the original trial;

3. in the case of an ex officio retrial by the people's court with a complainant, the hearing will start with a statement of the retrial request and reasons therefor by the complainant, followed by a response by the respondent and expressing of opinions by other parties to the original trial; or

4. in the case of an ex officio retrial by the people's court with no complainant, the hearing will start with a statement by the plaintiff or appellant to the original trial, followed by expressing of opinions by other parties to the original trial.

For the circumstances under Item 1 to 3 of the preceding Paragraph, the people's court shall require the party to clarify their request for a retrial.

人发表意见。

对前款第一项至第三项规定的情形，人民法院应当要求当事人明确其再审理求。

**第四百零三条** 人民法院审理再审案件应当围绕再审理求进行。当事人的再审理求超出原审诉讼请求的，不予审理；符合另案诉讼条件的，告知当事人可以另行起诉。

被申请人及原审其他当事人在庭审辩论结束前提出的再审理求，符合民事诉讼法第二百一十二条规定的，人民法院应当一并审理。

人民法院经再审，发现已经发生法律效力的判决、裁定损害国家利益、社会公共利益、他人合法权益的，应当一并审理。

**第四百零四条** 再审审理期间，有下列情形之一的，可以裁定终结再审程序：

（一）再审申请人在再审期间撤

**Article 403** The people's court shall try a retrial case by focusing on the request for a retrial. It is non-justiciable if the party's request for a retrial is beyond the claim in the original trial; the party will be informed that it may file a separate suit if the eligibility for a separate suit is met. Where the respondent and other parties to the original trial file a request for a retrial before the end of the court debate, the people's court shall try the case by joinder of actions if the requirements of Article 212 of the Civil Procedure Law are met.

Where the people's court, upon retrial, finds that a legally effective judgment or ruling harms national interests, public interests or the legitimate rights and interests of others, it shall consolidate the actions for trial.

**Article 404** The retrial procedure may be ruled to be terminated in the case of any of the following circumstances during the retrial: 1. where the people's court permits the applicant for a retrial to withdraw the request for a retrial during the retrial;

2. where it is treated as a withdrawal of the request for a retrial because the applicant for a retrial, upon being summoned, refuses

回再审理请求，人民法院准许的；

（二）再审申请人经传票传唤，无正当理由拒不到庭的，或者未经法庭许可中途退庭，按撤回再审理请求处理的；

（三）人民检察院撤回抗诉的；

（四）有本解释第四百条第一项至第四项规定情形的。

因人民检察院提出抗诉裁定再审的案件，申请抗诉的当事人有前款规定的情形，且不损害国家利益、社会公共利益或者他人合法权益的，人民法院应当裁定终结再审程序。

再审程序终结后，人民法院裁定中止执行的原生效判决自动恢复执行。

without proper cause to appear in court, or leaves the courtroom during the trial without the permission of the court;

3. where the people's procuratorate withdraws the protest; or

4. where there are circumstances as set forth in Item 1 to 4, Article 400 of this Interpretation.

For a case ordered to be retried upon a protest by the people's procuratorate, the people's court shall order termination of the retrial procedure if the party requesting a retrial falls within a circumstance set forth in the preceding paragraph provided that no harm is caused to the national interests, public interests or legitimate rights and interests of others.

Upon termination of the retrial procedure, the enforcement of the original effective judgment ruled by the people's court which has been suspended will be reinstated automatically.

#### 第四百零五条 人民法院经再

审审理认为，原判决、裁定认定事实清楚、适用法律正确的，应予维持；原判决、裁定认定事实、适用法律虽有瑕疵，但裁判结果正确

**Article 405 The original judgment or ruling shall be upheld if the people's court upon retrial holds that the facts are clearly ascertained and the law was correctly applied by such judgment or ruling; the original judgment or ruling shall be upheld after its flaw is corrected in the retrial judgment or ruling if the results are correct notwithstanding the flaws in ascertaining the facts or applying the law in the original**

的，应当在再审判决、裁定中纠正瑕疵后予以维持。

原判决、裁定认定事实、适用法律错误，导致裁判结果错误的，应当依法改判、撤销或者变更。

**judgment or ruling.** The original judgment or ruling shall be lawfully overturned, revoked or amended if the results are erroneous due to the original judgment or ruling incorrectly ascertaining the facts or application of the law.

**第四百零六条** 按照第二审程序再审的案件，人民法院经审理认为不符合民事诉讼法规定的起诉条件或者符合民事诉讼法第一百二十七条规定不予受理情形的，应当裁定撤销一、二审判决，驳回起诉。

**Article 406** Where the people's court, upon trying a case retried by second-instance proceedings, holds that it does not meet the actionable conditions set forth in the Civil Procedure Law or it constitutes an inadmissible circumstance set forth in Article 127 of the Civil Procedure Law, the people's court shall revoke the first-instance and second-instance judgments and dismiss the suit.

**第四百零七条** 人民法院对调解书裁定再审后，按照下列情形分别处理：

（一）当事人提出的调解违反自愿原则的事由不成立，且调解书的内容不违反法律强制性规定的，裁定驳回再审申请；

（二）人民检察院抗诉或者再审检察建议所主张的损害国家利益、社会公共利益的理由不成立的，裁定终结再审程序。

**Article 407** Upon ordering the retrial of a mediation statement, the people's court shall act respectively as follows: 1. the request for a retrial will be dismissed if the grounds submitted by the party for mediation violating the principle of voluntariness are not tenable provided that the content of the mediation statement does not violate the mandatory provisions of law; or

2. the retrial procedure will be terminated if the grounds are untenable in the protest or procuratorial proposal for a retrial by the people's procuratorate regarding the claims that the national interests and public interests are harmed.

Under the circumstances in the preceding paragraph, the enforcement will be resumed automatically if the people's court ruled that the enforcement of the mediation statement subject to suspension is required to be continued.

前款规定情形，人民法院裁定中止执行的调解书需要继续执行的，自动恢复执行。

**第四百零八条** 一审原告在再审审理程序中申请撤回起诉，经其他当事人同意，且不损害国家利益、社会公共利益、他人合法权益的，人民法院可以准许。裁定准许撤诉的，应当一并撤销原判决。

一审原告在再审审理程序中撤回起诉后重复起诉的，人民法院不予受理。

**第四百零九条** 当事人提交新的证据致使再审改判，因再审申请人或者申请检察监督当事人的过错未能在原审程序中及时举证，被申请人等当事人请求补偿其增加的交通、住宿、就餐、误工等必要费用的，人民法院应予支持。

**第四百一十条** 部分当事人到庭并达成调解协议，其他当事人未作出书面表示的，人民法院应当在判决中对该事实作出表述；调解协

**Article 408** The people's court may permit the plaintiff to withdraw its suit in the retrial procedure upon the consent of the other parties provided that no harm is caused to the national interests, public interests or legitimate rights and interests of others. The original judgment shall be revoked in conjunction with the ruling to grant the withdrawal. Where the first-instance plaintiff files a suit again after its withdrawal in the retrial procedure, the people's court may not accept such suit.

**Article 409** Where the new evidence submitted by a party overturns the retrial, the people's court shall support the claim by the respondent and other parties to be compensated for their increase of necessary expenses, such as transportation, accommodation, meals and lost working time, as a result of failure to timely submit evidence in the original trial due to the fault of the applicant for a retrial or the party requesting procuratorial supervision.

**Article 410** Where some of the parties appear in court and enter into a mediation agreement but no written statement is made by other parties, the people's court shall state such facts in the judgment; a mediation agreement the content of which does not violate the law and does no harm to the legitimate rights and interests of other parties may be

议内容不违反法律规定，且不损害其他当事人合法权益的，可以在判决主文中予以确认。

**affirmed in the main text of the judgment.**

**第四百一十一条** 人民检察院依法对损害国家利益、社会公共利益的发生法律效力的判决、裁定、调解书提出抗诉，或者经人民检察院检察委员会讨论决定提出再审检察建议的，人民法院应予受理。

**Article 411** A protest lawfully lodged by the people's procuratorate against a legally effective judgment, ruling or mediation statement causing harm to the national interests or public interests, or the procuratorial proposal for a retrial submitted upon a decision through discussion by the procuratorial committee of the people's procuratorate, shall be accepted by the people's court.

**第四百一十二条** 人民检察院对已经发生法律效力的判决以及不予受理、驳回起诉的裁定依法提出抗诉的，人民法院应予受理，但适用特别程序、督促程序、公示催告程序、破产程序以及解除婚姻关系的判决、裁定等不适用审判监督程序的判决、裁定除外。

**Article 412** A protest lawfully lodged by the people's procuratorate against a legally effective judgment or ruling of non-admission or dismissal, except for a judgment or ruling applicable to a special procedure, procedure for the recovery of debts, procedure for public invitation to assert claims or bankruptcy proceedings or on dissolution of marriage which is not applicable for the procedure for trial supervision, shall be admissible in the people's court.

**第四百一十三条** 人民检察院依照民事诉讼法第二百一十六条第一款第三项规定对有明显错误的再审判决、裁定提出抗诉或者再审检察建议的，人民法院应予受理。

**Article 413** A protest lodged or procuratorial proposal for a retrial submitted by the people's procuratorate under Item 3, Paragraph 1, Article 216 of the Civil Procedure Law against a retrial judgment or ruling which is obviously erroneous shall be admissible in the people's court.

**第四百一十四条** 地方各级人

**Article 414** A procuratorial proposal for a retrial submitted by

民检察院依当事人的申请对生效判决、裁定向同级人民法院提出再审检察建议，符合下列条件的，应予受理：

（一）再审检察建议书和原审当事人申请书及相关证据材料已经提交；

（二）建议再审的对象为依照民事诉讼法和本解释规定可以进行再审的判决、裁定；

（三）再审检察建议书列明该判决、裁定有民事诉讼法第二百一十五条第二款规定情形；

（四）符合民事诉讼法第二百一十六条第一款第一项、第二项规定情形；

（五）再审检察建议经该人民检察院检察委员会讨论决定。

不符合前款规定的，人民法院可以建议人民检察院予以补正或者撤回；不予补正或者撤回的，应当

**a local people's procuratorate at all levels to the people's court at the same level upon the request of the parties against an effective judgment or ruling shall be admissible if it is**

**eligible due to the following conditions:** 1. where the procuratorial proposal for a retrial and the request of the party to the original trial and relevant evidentiary materials have been submitted;

2. where the subject under such proposal for a retrial is a judgment or ruling which may be retried under the Civil Procedure Law and this Interpretation;

3. where the procuratorial proposal for a retrial specifies that such judgment or ruling falls within a circumstance set forth in Paragraph 2, Article 215 of the Civil Procedure Law;

4. where there is a circumstance set forth under Items 1 and 2, Paragraph 1, Article 216 of the Civil Procedure Law; or

5. where the procuratorial proposal for a retrial is decided through discussion by the procuratorial committee of the people's procuratorate.

If it does not meet the requirements of the preceding paragraph, the people's court may suggest the people's procuratorate to order rectification or withdrawal; if no rectification or withdrawal is carried out, the people's procuratorate shall be notified that it is inadmissible.



最高人民法院关于适用《中华人民共和国民事诉讼法》的解释（2022 修正）

函告人民检察院不予受理。

**第四百一十五条** 人民检察院依当事人的申请对生效判决、裁定提出抗诉，符合下列条件的，人民法院应当在三十日内裁定再审：

（一）抗诉书和原审当事人申请书及相关证据材料已经提交；

（二）抗诉对象为依照民事诉讼法和本解释规定可以进行再审的判决、裁定；

（三）抗诉书列明该判决、裁定有民事诉讼法第二百一十五条第一款规定情形；

（四）符合民事诉讼法第二百一十六条第一款第一项、第二项规定情形。

不符合前款规定的，人民法院可以建议人民检察院予以补正或者撤回；不予补正或者撤回的，人民法院可以裁定不予受理。

**Article 415** For a protest lodged by the people's procuratorate upon the request of the parties against an effective judgment or ruling, the people's court shall, within 30 days, order a retrial if it is eligible for the following conditions: 1. where the motion of protest and the request of the party to the original trial and relevant evidentiary materials have been submitted;

2. where the subject under such protest is a judgment or ruling which may be retried under the Civil Procedure Law and this Interpretation;

3. where the motion of protest specifies that such judgment or ruling falls within a circumstance set forth in Paragraph 1, Article 215 of the Civil Procedure Law; or

4. where there is a circumstance as set forth under Items 1 and 2, Paragraph 1, Article 216 of the Civil Procedure Law;

If it does not meet the requirements of the preceding paragraph, the people's court may suggest the people's procuratorate to carry out rectification or withdrawal; if no rectification or withdrawal is carried out, it may be ruled inadmissible by the people's court.

**第四百一十六条** 当事人的再

**Article 416** Where the people's procuratorate lodges a protest against an original judgment, ruling or mediation statement

审申请被上级人民法院裁定驳回后，人民检察院对原判决、裁定、调解书提出抗诉，抗诉事由符合民事诉讼法第二百零七条第一项至第五项规定情形之一的，受理抗诉的人民法院可以交由下一级人民法院再审。

**after the request for a retrial is dismissed by the superior people's court, the people's court which accepts the protest may refer the retrial to the people's court at lower level if the grounds for protest fall within one of the circumstances set forth in Items 1 to 5, Article 207 of the Civil Procedure Law.**

**第四百一十七条** 人民法院收到再审检察建议后，应当组成合议庭，在三个月内进行审查，发现原判决、裁定、调解书确有错误，需要再审的，依照民事诉讼法第二百零五条规定裁定再审，并通知当事人；经审查，决定不予再审的，应当书面回复人民检察院。

**Article 417 Upon receipt of a procuratorial proposal for a retrial, the people's court shall form a collegial bench to review the case within three months, and order a retrial under Article 198 of the Civil Procedure Law and notify the parties if it finds that the original judgment, ruling or mediation statement is definitely erroneous thereby requiring a retrial; a written reply shall be given to the people's procuratorate if it decides against a retrial upon review.**

**第四百一十八条** 人民法院审理因人民检察院抗诉或者检察建议裁定再审的案件，不受此前已经作出的驳回当事人再审申请裁定的影响。

**Article 418 The retrial of a case by the people's court due to the protest by the people's procuratorate or a procuratorial proposal shall not be affected by a ruling that has been previously rendered to dismiss the party's request for a retrial.**

**第四百一十九条** 人民法院开庭审理抗诉案件，应当在开庭三日前通知人民检察院、当事人和其他

**Article 419 When hearing a protest case, the people's court shall notify the people's procuratorate, the parties and other participants in the proceedings 3 days before the hearing. The people's procuratorate at the same level or the people's procuratorate which lodges the protest shall send officers to**

诉讼参与人。同级人民检察院或者提出抗诉的人民检察院应当派员出庭。

人民检察院因履行法律监督职责向当事人或者案外人调查核实的情况，应当向法庭提交并予以说明，由双方当事人进行质证。

**第四百二十条** 必须共同进行诉讼的当事人因不能归责于本人或者其诉讼代理人的事由未参加诉讼的，可以根据民事诉讼法第二百零七条第八项规定，自知道或者应当知道之日起六个月内申请再审，但符合本解释第四百二十一条规定情形的除外。

人民法院因前款规定的当事人申请而裁定再审，按照第一审程序再审的，应当追加其为当事人，作出新的判决、裁定；按照第二审程序再审，经调解不能达成协议的，应当撤销原判决、裁定，发回重审，重审时应追加其为当事人。

**appear in court.** The facts investigated and verified with the parties or outsiders in the performance of legal supervision by the people's procuratorate shall be submitted and explained to the court, subject to cross-examination by both parties.

**Article 420** Where a party which must participate in a joint action fails to participate in the suit for reasons not attributable to itself or its litigation agent, such party may, under Item 8, Article 200 of the Civil Procedure Law, request a retrial within 6 months from the date that it is known or ought to be known, unless there is a circumstance specified in **Article 421 of this Interpretation.** Where the people's court orders a retrial upon the request of a party specified in the preceding paragraph, the same shall be added as a party to issue a new judgment or ruling if the retrial is to be conducted in the first-instance proceedings; the original judgment or ruling shall be revoked to remand the case for a retrial, and the same party shall be added as a party if no agreement is entered into upon mediation when the retrial is to be conducted in the second-instance proceedings.

**第四百二十一条** 根据民事诉

**Article 421** Subject to Article 234 of the Civil Procedure Law,

讼法第二百三十四条规定，案外人对驳回其执行异议的裁定不服，认为原判决、裁定、调解书内容错误损害其民事权益的，可以自执行异议裁定送达之日起六个月内，向作出原判决、裁定、调解书的人民法院申请再审。

**an outsider may lodge a request for a retrial to the people's court which issues the original judgment, ruling or mediation statement within 6 months from the date that the ruling in respect of the challenge to enforcement is served, if such outsider is dissatisfied with the ruling in respect of the challenge to enforcement, believing that the original judgment, ruling or mediation statement is erroneous in content with prejudice to its civil rights and interests.**

**第四百二十二条** 根据民事诉讼法第二百三十四条规定，人民法院裁定再审后，案外人属于必要的共同诉讼当事人的，依照本解释第四百二十条第二款规定处理。

**Article 422 Subject to Article 234 of the Civil Procedure Law, Paragraph 2, Article 420 of this Interpretation will apply to an outsider who is a necessary party to joint action if the people's court orders a retrial.** If an outsider is not a necessary party to a joint action, the people's court will only hold a trial on the content of the original judgment, ruling or mediation statement which damages its civil rights and interests. If the request for a retrial is established upon trial, the original judgment, ruling or mediation statement will be revoked or amended; where the request for a retrial is not established, the original judgment, ruling or mediation statement shall be upheld.

案外人不是必要的共同诉讼当事人的，人民法院仅审理原判决、裁定、调解书对其民事权益造成损害的内容。经审理，再审请求成立的，撤销或者改变原判决、裁定、调解书；再审请求不成立的，维持原判决、裁定、调解书。

**第四百二十三条** 本解释第三百三十八条规定适用于审判监督程序。

**Article 423 Article 338 of this Interpretation is applicable to the procedure for trial supervision.**

**第四百二十四条** 对小额诉讼

**Article 424 A request lodged by a party for a retrial to the**

案件的判决、裁定，当事人以民事诉讼法第二百零七条规定的事由向原审人民法院申请再审的，人民法院应当受理。申请再审事由成立的，应当裁定再审，组成合议庭进行审理。作出的再审判决、裁定，当事人不得上诉。

当事人以不应按小额诉讼案件审理为由向原审人民法院申请再审的，人民法院应当受理。理由成立的，应当裁定再审，组成合议庭审理。作出的再审判决、裁定，当事人可以上诉。

**people's court that originally tried the case on the grounds set forth in Article 207 of the Civil Procedure Law against the judgment or ruling in a small claim is admissible in the people's court. Where the grounds for request for a retrial are established, it shall order a retrial and form a collegial bench for trial. The parties may not appeal the retrial judgment or ruling issued.** A request lodged by a party to the people's court that originally tried the case on the ground that it shall not be tried as a small claim shall be admissible in the people's court. Where the grounds are established, it shall order a retrial and form a collegial bench for trial. The parties may appeal the retrial judgment or ruling issued.

## 十九、督促程序

**第四百二十五条** 两个以上人民法院都有管辖权的，债权人可以向其中一个基层人民法院申请支付令。

债权人向两个以上有管辖权的基层人民法院申请支付令的，由最先立案的人民法院管辖。

## Chapter XIX Procedure of Supervision and Urge

**Article 425** Where two or more people's courts have jurisdiction, the creditor may apply to one basic people's court among them for a payment order. Where the creditor applies to two or more basic people's courts with competent jurisdiction for a payment order, the people's court that first docketed the case has jurisdiction over the case.

## 第四百二十六条 人民法院收

**Article 426** Where the people's court believes that the request for payment order does not comply with the requirements

到债权人的支付令申请书后，认为申请书不符合要求的，可以通知债权人限期补正。人民法院应当自收到补正材料之日起五日内通知债权人是否受理。

**upon receipt of the request from the creditor, it may notify the creditor to make a correction within the prescribed period. The people's court shall notify the creditor regarding admissibility within 5 days from the date of receipt of the corrected materials.**

**第四百二十七条** 债权人申请支付令，符合下列条件的，基层人民法院应当受理，并在收到支付令申请书后五日内通知债权人：

（一）请求给付金钱或者汇票、本票、支票、股票、债券、国库券、可转让的存款单等有价值证券；

（二）请求给付金钱或者有价证券已到期且数额确定，并写明了请求所根据的事实、证据；

（三）债权人没有对待给付义务；

（四）债务人在我国境内且未下落不明；

（五）支付令能够送达债务人；

（六）收到申请书的人民法院有

**Article 427 The request by a creditor for a payment order shall be admissible in the people's court which will inform the creditor within 5 days upon receipt of the request for payment order, if the following conditions are met:** 1. where the request is for the payment of money or bills of exchange, promissory notes, cheques, stocks, bonds, treasury bills and negotiable certificates of deposit and other negotiable securities;

2. where the money or negotiable securities requested to be paid have fallen due in a definite amount and the facts and evidence on which the request is based are specified;

3. where the creditor has no obligations to quid pro quo;

4. where the debtor is in the country and not missing;

5. where the payment order can be served on the debtor;

6. where the people's court which receives the request shall have jurisdiction; or

7. where the creditor does not request the people's court for pretrial preservation.

Where the requirements of the preceding paragraph are not met, the people's court shall inform the creditor, within 5 days after the receipt of a payment order, that the request is inadmissible.

The admission by a people's court of a payment order case is not limited by the debt amount.

管辖权；

（七）债权人未向人民法院申请  
诉前保全。

不符合前款规定的，人民法院  
应当在收到支付令申请书后五日内  
通知债权人不予受理。

基层人民法院受理申请支付令  
案件，不受债权金额的限制。

**第四百二十八条** 人民法院受  
理申请后，由审判员一人进行审  
查。经审查，有下列情形之一的，  
裁定驳回申请：

（一）申请人不具备当事人资格  
的；

（二）给付金钱或者有价证券的  
证明文件没有约定逾期给付利息或  
者违约金、赔偿金，债权人坚持要  
求给付利息或者违约金、赔偿金  
的；

（三）要求给付金钱或者有价

**Article 428** Upon admission in the people's court, the review  
will be conducted by a single judge. Upon review, the request  
will be dismissed in any of the following circumstances: 1.

where the applicant is not qualified to be a party;

2. where no late payment interest or liquidated damages or  
compensation are agreed in the documentary proof of payment of  
money or negotiable securities, but the creditor insists on payment  
of interest or liquidated damages or compensation;

3. where money or negotiable securities requested to be paid are  
illegal proceeds; or

4. where the money or negotiable securities requested to be paid  
has not yet fallen due or has no definite amount.

Where, after its admission of the request for payment order, the  
people's court finds that such request is not eligible due to the  
conditions of admissibility set forth in this Interpretation, it shall  
dismiss such request within 15 days from the date of admission.



证券属于违法所得的；

（四）要求给付的金钱或者有价

证券尚未到期或者数额不确定的。

人民法院受理支付令申请后，发现不符合本解释规定的受理条件的，应当在受理之日起十五日内裁定驳回申请。

**第四百二十九条** 向债务人本人送达支付令，债务人拒绝接收的，人民法院可以留置送达。

**Article 429** Where the debtor refuses to receive the payment order served on itself, the payment order may be served by the people's court by leaving it at the residence of the debtor.

**第四百三十条** 有下列情形之一的，人民法院应当裁定终结督促程序，已发出支付令的，支付令自行失效：

**Article 430** The people's court shall terminate the procedure for the recovery of debts and the payment order which has been issued shall automatically become invalid, in any of the following circumstances: 1. where the creditor files a suit again in respect of the same debtor-creditor relationship after the people's court has admitted the request for payment order;

（一）人民法院受理支付令申请后，债权人就同一债权债务关系又提起诉讼的；

2. where the debtor cannot be served within 30 days from the date that the people's court issues the payment order; or

（二）人民法院发出支付令之日起三十日内无法送达债务人的；

3. where the creditor withdraws the request prior to receipt by the debtor of the payment order.

（三）债务人收到支付令前，债权人撤回申请的。

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**第四百三十一条** 债务人在收到支付令后，未在法定期间提出书面异议，而向其他人民法院起诉的，不影响支付令的效力。

债务人超过法定期间提出异议的，视为未提出异议。

**Article 431** The validity of the payment order is not affected if the debtor files a suit in another people's court instead of a challenge in writing during the statutory period after the receipt of the payment order. Where the debtor submits a challenge beyond the statutory period, the challenge is deemed not submitted.

**第四百三十二条** 债权人基于同一债权债务关系，在同一支付令申请中向债务人提出多项支付请求，债务人仅就其中一项或者几项请求提出异议的，不影响其他各项请求的效力。

**Article 432** Where a creditor, based on the same debtor-creditor relationship, files a plurality of payment claims in the same request for payment order, the validity of other claims will not be affected if the debtor only challenges one or more of the claims.

**第四百三十三条** 债权人基于同一债权债务关系，就可分之债向多个债务人提出支付请求，多个债务人中的一人或者几人提出异议的，不影响其他请求的效力。

**Article 433** Where a creditor, based on the same debtor-creditor relationship, files payment claims to multiple debtors in respect of a divisible debt, the validity of other claims will not be affected if one or more of such debtors submit the challenge.

**第四百三十四条** 对设有担保的债务的主债务人发出的支付令，对担保人没有拘束力。

债权人就担保关系单独提起诉讼的，支付令自人民法院受理案件

**Article 434** The payment order issued to the principal debtor in respect of a secured debt is non-binding upon the surety. Where the creditor separately files a suit in respect of the security, the payment order expires from the date on which the court admits the case.

之日起失效。

#### 第四百三十五条 经形式审

查，债务人提出的书面异议有下列情形之一的，应当认定异议成立，裁定终结督促程序，支付令自行失效：

（一）本解释规定的不予受理申请情形的；

（二）本解释规定的裁定驳回申请情形的；

（三）本解释规定的应当裁定终结督促程序情形的；

（四）人民法院对是否符合发出支付令条件产生合理怀疑的。

**Article 435 The challenge shall be held to be established and the procedure for the recovery of debts shall be ruled to be terminated with automatic invalidation of the payment order, if, upon a formality review, the challenge in writing filed by the debtor falls within any of the following circumstances: 1.**

where there is an inadmissible circumstance set forth in this Interpretation;

2. where there is a circumstance dismissible by a ruling set forth in this Interpretation;

3. where there is a circumstance set forth in this Interpretation which shall be subject to a ruling to terminate the procedure for the recovery of debts; or

4. where the people's court has reasonable doubt regarding whether the conditions to issue a payment order are met.

#### 第四百三十六条 债务人对债

务本身没有异议，只是提出缺乏清偿能力、延缓债务清偿期限、变更债务清偿方式等异议的，不影响支付令的效力。

人民法院经审查认为异议不成立的，裁定驳回。

**Article 436 Where the debtor does not challenge the debt itself, but only submits a challenge in respect of the insolvency, delay in debt repayment, change in debt repayment method and the validity of the payment order will not be affected.** The people's court shall dismiss the challenge if it, upon review, believes that such challenge is not established.

The debtor's verbal challenge is invalid.

债务人的口头异议无效。

**第四百三十七条** 人民法院作出终结督促程序或者驳回异议裁定前，债务人请求撤回异议的，应当裁定准许。

债务人对撤回异议反悔的，人民法院不予支持。

**Article 437** A request by the debtor to withdraw their challenge shall be permitted before the people's court terminates the procedure for the recovery of debts or dismisses the challenge. The rescission by the debtor of the withdrawal of a challenge is not supported by the people's court.

**第四百三十八条** 支付令失效后，申请支付令的一方当事人不同意提起诉讼的，应当自收到终结督促程序裁定之日起七日内向受理申请的人民法院提出。

申请支付令的一方当事人不同意提起诉讼的，不影响其向其他有管辖权的人民法院提起诉讼。

**Article 438** Where a party to the request for payment order does not agree to file a suit after the payment order becomes invalid, it shall, within 7 days from the date of receipt of the ruling to terminate the procedure for the recovery of debts, inform the people's court that accepts the request. The disagreement by a party to the request for a payment order to file a suit does not affect its filing of a suit in other competent people's courts.

**第四百三十九条** 支付令失效后，申请支付令的一方当事人自收到终结督促程序裁定之日起七日内未向受理申请的人民法院表明不同意提起诉讼的，视为向受理申请的人民法院起诉。

债权人提出支付令申请的时

**Article 439** Where a party to a request for payment order fails to indicate to the people's court that accepts the request that it does not agree to file a suit within 7 days from the date of receipt of the ruling to terminate the procedure for the recovery of debts after the payment order becomes invalid, such party shall be deemed to have filed a suit in the people's court that accepts the request. The time for the creditor to request the payment order is the time to file a suit with the people's court.

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间，即为向人民法院起诉的时间。

**第四百四十条** 债权人向人民法院申请执行支付令的期间，适用民事诉讼法第二百四十六条的规定。

**Article 440** During the period in which the creditor requests to enforce a payment order, Article 246 of the Civil Procedure Law is applicable.

**第四百四十一条** 人民法院院长发现本院已经发生法律效力的支付令确有错误，认为需要撤销的，应当提交本院审判委员会讨论决定后，裁定撤销支付令，驳回债权人的申请。

**Article 441** Where the president of the people's court finds that a legally effective payment order of the court is definitely erroneous, and believes that it needs to be revoked, he shall submit the same to the court's Adjudication Committee for discussion to revoke the payment order and dismiss the creditor's request.

## 二十、公示催告程序

## Chapter XX Procedure for Public Invitation to Assert Claims

**第四百四十二条** 民事诉讼法第二百二十五条规定的票据持有人，是指票据被盗、遗失或者灭失前的最后持有人。

**Article 442** For the purposes of Article 225 of the Civil Procedure Law, the term "instrument holder" refers to the last holder before the instrument is stolen, lost or destroyed.

**第四百四十三条** 人民法院收到公示催告的申请后，应当立即审查，并决定是否受理。经审查认为符合受理条件的，通知予以受理，并同时通知支付人停止支付；认为不符合受理条件的，七日内裁定驳

**Article 443** The people's court shall immediately conduct a review, and decide the admissibility, upon receipt of a request for public invitation to assert claims. Where it is held admissible, a notice for admission will be issued, and the payer will be notified to stop payment; where it is held inadmissible, a ruling to dismiss the request will be rendered within 7 days.

回申请。

#### 第四百四十四条 因票据丧失，申请公示催告的，人民法院应

结合票据存根、丧失票据的复印件、出票人关于签发票据的证明、申请人合法取得票据的证明、银行挂失止付通知书、报案证明等证据，决定是否受理。

**Article 444** Where a request for public invitation to assert claims is filed due to a lost instrument, the people's court shall decide the admissibility based on the instrument stubs, photocopies of the lost instrument, certificate by the drawer on the issuance of the instrument, proof of lawful acquisition by the applicant of the instrument, bank's notice of suspension of payment on the reporting of the lost instrument, proof of reporting to the police, and other evidence.

#### 第四百四十五条 人民法院依照民事诉讼法第二百二十六条规定

发出的受理申请的公告，应当写明下列内容：

（一）公示催告申请人的姓名或者名称；

（二）票据的种类、号码、票面金额、出票人、背书人、持票人、付款期限等事项以及其他可以申请公示催告的权利凭证的种类、号码、权利范围、权利人、义务人、行权日期等事项；

（三）申报权利的期间；

（四）在公示催告期间转让票据

#### **Article 445** A public announcement for admission of a request issued by the people's court under Article 226 of the Civil

**Procedure Law shall state:** 1. the name of the applicant for public invitation to assert claims;

2. the type, number, face amount, drawer, endorser, holder, payment period and other matters of the instrument, as well as the type, number, scope of rights, obligee, obligor, vesting date and other matters of other documents of title eligible for a request for public invitation to assert claims;

3. the period to declare rights; and

4. legal consequences for failure by the interested party to declare the assignment of documents of title such as negotiable instruments during the public invitation.

等权利凭证，利害关系人不申报的法律后果。

**第四百四十六条** 公告应当在有关报纸或者其他媒体上刊登，并于同日公布于人民法院公告栏内。人民法院所在地有证券交易所的，还应当同日在该交易所公布。

**Article 446** The public announcement shall be published in the relevant newspaper or other media and on the bulletin board of the people's court on the same day. If there is a stock exchange in the place where the people's court is situated, it shall also be released in such exchange on the same day.

**第四百四十七条** 公告期间不得少于六十日，且公示催告期间届满日不得早于票据付款日后十五日。

**Article 447** The public announcement period shall not be less than 60 days, and the expiry date of the period for public invitation to assert claims may not be earlier than 15 days after the instrument payment date.

**第四百四十八条** 在申报期届满后、判决作出之前，利害关系人申报权利的，应当适用民事诉讼法第二百二十八条第二款、第三款规定处理。

**Article 448** Where an interested party declares rights before the judgment is entered upon the expiry of the declaration period, Paragraphs 2 and 3, Article 228 of the Civil Procedure Law shall be applicable.

**第四百四十九条** 利害关系人申报权利，人民法院应当通知其向法院出示票据，并通知公示催告申请人在指定的期间查看该票据。公示催告申请人申请公示催告的票据与利害关系人出示的票据不一致的，应当裁定驳回利害关系人的申

**Article 449** Where an interested party declares rights, the people's court shall notify it to present the instrument to the court and notify the applicant for public invitation to assert claims to check out such instrument within a specified period. Where the instrument subject to the public invitation to assert claims by the applicant is inconsistent with that presented by the interested party, the declaration shall be dismissed.



报。

**第四百五十条** 在申报权利的期间无人申报权利，或者申报被驳回的，申请人应当自公示催告期间届满之日起一个月内申请作出判决。逾期不申请判决的，终结公示催告程序。

裁定终结公示催告程序的，应当通知申请人和支付人。

**Article 450** Where no one declares rights during the declaration of rights, or the declaration is dismissed, the applicant shall, within 1 month from the expiry date of the period for public invitation to assert claims, request to enter judgment. If no request for judgment is filed within the period, the procedure for public invitation to assert claims will be terminated. The applicant and the payer shall be notified if the procedure for public invitation to assert claims will be terminated.

**第四百五十一条** 判决公告之日起，公示催告申请人有权依据判决向付款人请求付款。

付款人拒绝付款，申请人向人民法院起诉，符合民事诉讼法第一百二十二条规定的起诉条件的，人民法院应予受理。

**Article 451** From the date of publication of the judgment, the applicant for public invitation to assert claims is entitled to request the payer to make payment based on the judgment. Where the applicant files a suit in the people's court upon refusal by the payer to pay, the people's court shall accept the case if the actionable conditions set forth in Article 122 of the Civil Procedure Law are met.

**第四百五十二条** 适用公示催告程序审理案件，可由审判员一人独任审理；判决宣告票据无效的，应当组成合议庭审理。

**Article 452** A case applying the procedure for public invitation to assert claims is triable by a sole judge; a collegial bench shall be formed for the trial to invalidate a negotiable instrument.

**第四百五十三条** 公示催告申请人撤回申请，应在公示催告前提

**Article 453** The applicant for public invitation to assert claims shall apply to withdraw the request before the public invitation to assert claims; where the request is withdrawn

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出；公示催告期间申请撤回的，人民法院可以径行裁定终结公示催告程序。

**during the public invitation to assert claims, the people's court may directly terminate the procedure for public invitation to assert claims.**

**第四百五十四条** 人民法院依照民事诉讼法第二百二十七条规定通知支付人停止支付，应当符合有关财产保全的规定。支付人收到停止支付通知后拒不止付的，除可依照民事诉讼法第一百一十四条、第一百一十七条规定采取强制措施外，在判决后，支付人仍应承担付款义务。

**Article 454** The notification by the people's court to the payer to stop payment in accordance with Article 227 of the Civil Procedure Law shall be subject to the provisions relating to property preservation. Where the payer refuses to stop payment after it receives notification to stop payment, the payer shall nevertheless undertake the obligations to pay after the judgment in addition to coercive measures that may be taken under Articles 114 and 117 of the Civil Procedure Law.

**第四百五十五条** 人民法院依照民事诉讼法第二百二十八条规定终结公示催告程序后，公示催告申请人或者申报人向人民法院提起诉讼，因票据权利纠纷提起的，由票据支付地或者被告住所地人民法院管辖；因非票据权利纠纷提起的，由被告住所地人民法院管辖。

**Article 455** After the people's court terminates the procedure for public invitation to assert claims under 228 of the Civil Procedure Law, if the applicant for the procedure for public invitation to assert claims or declarer files a suit in the people's court, the people's court in the place where the instrument is paid or where the defendant's domicile is situated has jurisdiction if it is filed regarding a dispute over the rights of an instrument; if it is filed regarding a non-rights dispute, the people's court in the place where the defendant's domicile is situated has jurisdiction.

**第四百五十六条** 依照民事诉讼法第二百二十八条规定制作的终结公示催告程序的裁定书，由审判

**Article 456** The ruling to terminate the procedure for public invitation to assert claims issued under Article 228 of the Civil Procedure Law will be signed by the judge and the court clerk and affixed with the seal of the people's court.

员、书记员署名，加盖人民法院印章。

**第四百五十七条** 依照民事诉讼法第二百三十条的规定，利害关系人向人民法院起诉的，人民法院可按票据纠纷适用普通程序审理。

**Article 457** Where any interested party files a suit in the people's court under Article 230 of the Civil Procedure Law, the people's court may apply the ordinary procedure for trial.

**第四百五十八条** 民事诉讼法第二百三十条规定的正当理由，包括：

（一）因发生意外事件或者不可抗力致使利害关系人无法知道公告事实的；

（二）利害关系人因被限制人身自由而无法知道公告事实，或者虽然知道公告事实，但无法自己或者委托他人代为申报权利的；

（三）不属于法定申请公示催告情形的；

（四）未予公告或者未按法定方式公告的；

（五）其他导致利害关系人在判

**Article 458** The proper causes set forth in Article 230 of the Civil Procedure Law includes that:

1. it is impossible for the interested party to know the fact that there is a public announcement due to an accident or force majeure;
2. the interested party is restricted in his/her personal liberty from knowing the fact that there is a public announcement, or he/she is unable to declare rights by himself/herself or by proxy although the fact that there is a public announcement is known to him/her.
3. there is no statutory circumstance for public invitation to assert claims;
4. the public announcement failed to be made or to be made in a statutorily prescribed way; and
5. other objective reasons that cause the interested party to fail to declare rights to the people's court right before the judgment.

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决作出前未能向人民法院申报权利的客观事由。

**第四百五十九条** 根据民事诉讼法第二百三十条的规定，利害关系人请求人民法院撤除权判决的，应当将申请人列为被告。

利害关系人仅诉请确认其为合法持票人的，人民法院应当在裁判文书中写明，确认利害关系人为票据权利人的判决作出后，除权判决即被撤销。

**Article 459** Where an interested party requests the people's court to revoke the judgment for invalidation of an instrument under 230 of the Civil Procedure Law, the applicant shall be listed as a defendant. Where the interested party only claims to affirm him/her to be the legitimate holder, the people's court shall state so in the judgment document and the judgment for invalidation of the instrument will be revoked immediately after the judgment affirming the interested party to be the rights holder of the instrument is entered.

## 二十一、执行程序

## Chapter XXI Enforcement Procedure

**第四百六十条** 发生法律效力的实现担保物权裁定、确认调解协议裁定、支付令，由作出裁定、支付令的人民法院或者与其同级的被执行财产所在地的人民法院执行。

认定财产无主的判决，由作出判决的人民法院将无主财产收归国家或者集体所有。

**Article 460** A legally effective ruling to effectuate security interests or ruling affirming a mediation agreement or payment order will be enforced by the people's court that enters the ruling or payment order or the people's court at the same level in the place where the property to be enforced is situated. For a judgment concerning the determination of property as ownerless, the people's court that enters the judgment will nationalize the ownerless property or render it collectively owned.

**第四百六十一条** 当事人申请人民法院执行的生效法律文书应当

**Article 461** An effective legal instrument for the request by a party for enforcement by the people's court shall be subject to the following conditions: 1. the rights and obligations of the

具备下列条件：

（一）权利义务主体明确；

（二）给付内容明确。

法律文书确定继续履行合同的，应当明确继续履行的具体内容。

subject are clear; and

2. the content of performance is clear.

Where the legal instrument determines a continued performance of the contract, it shall clarify the specific content for the continued performance.

**第四百六十二条** 根据民事诉讼法第二百三十四条规定，案外人对执行标的提出异议的，应当在对该执行标的执行程序终结前提出。

**Article 462** Where an outsider challenges the subject matter of enforcement under Article 234 of the Civil Procedure Law, it shall submit the challenge before the termination of the enforcement procedure for subject matter.

**第四百六十三条** 案外人对执行标的提出的异议，经审查，按照下列情形分别处理：

（一）案外人对执行标的不享有足以排除强制执行的权益的，裁定驳回其异议；

（二）案外人对执行标的享有足以排除强制执行的权益的，裁定中止执行。

驳回案外人执行异议裁定送达案外人之日起十五日内，人民法院

**Article 463** The challenge submitted by an outsider against the subject matter of enforcement shall, upon review, be respectively treated as follows: 1. where the outsider is not entitled to rights or interests in the subject matter which are sufficient to preclude the enforcement, the challenge will be dismissed; or

2. where the outsider is entitled to rights or interests in the subject matter which are sufficient to preclude the enforcement, the enforcement will be suspended.

The people's court shall not dispose of the subject matter of enforcement within 15 days after the date of service on the outsider of the ruling to dismiss the outsider's challenge to enforcement.

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不得对执行标的进行处分。

**第四百六十四条** 申请执行人与被被执行人达成和解协议后请求中止执行或者撤回执行申请的，人民法院可以裁定中止执行或者终结执行。

**Article 464** The people's court may suspend or terminate enforcement if the applicant and the enforcee enter into a settlement agreement and thereafter request to suspend enforcement or withdraw the request for enforcement.

**第四百六十五条** 一方当事人不履行或者不完全履行在执行中双方自愿达成的和解协议，对方当事人申请执行原生效法律文书的，人民法院应当恢复执行，但和解协议已履行的部分应当扣除。和解协议已经履行完毕的，人民法院不予恢复执行。

**Article 465** Where a party fails to perform or to fully perform the settlement agreement voluntarily entered into by both sides in the enforcement, and the other party requests to enforce the original effective legal instrument, the people's court shall resume the enforcement, but the fulfilled part of the settlement agreement shall be excluded. Where the settlement agreement has been fulfilled, the people's court will not resume enforcement.

**第四百六十六条** 申请恢复执行原生效法律文书，适用民事诉讼法第二百四十六条申请执行期间的规定。申请执行期间因达成执行中的和解协议而中断，其期间自和解协议约定履行期限的最后一日起重新计算。

**Article 466** For the request for resumption of the original effective legal instrument, the period for request of enforcement set forth in Article 246 of the Civil Procedure Law is applicable. Where the enforcement period is interrupted by the request for enforcement of settlement agreement entered into during enforcement, the period will be recounted from the last date of the performance period as agreed in the settlement agreement.

**第四百六十七条** 人民法院依照民事诉讼法第二百三十八条规定

**Article 467** Where the people's court decides to suspend the enforcement under Article 238 of the Civil Procedure Law, the suspension period shall be consistent with the security period

决定暂缓执行的，如果担保是有期限的，暂缓执行的期限应当与担保期限一致，但最长不得超过一年。被执行人或者担保人对担保的财产在暂缓执行期间有转移、隐藏、变卖、毁损等行为的，人民法院可以恢复强制执行。

**if the security has a duration, but it shall not exceed one year at maximum. Where the enforcee or the surety commits an act such as transfer, hiding, selling or destroying the secured property during the suspension period, the people's court may resume compulsory enforcement.**

**第四百六十八条** 根据民事诉讼法第二百三十八条规定向人民法院提供执行担保的，可以由被执行人或者他人提供财产担保，也可以由他人提供保证。担保人应当具有代为履行或者代为承担赔偿责任的能力。

**Article 468** Where security for enforcement is provided to the people's court under Article 238 of the Civil Procedure Law, the enforcee or others may provide property security, or another person may alternatively provide security. The surety shall have the ability to perform or be liable for compensation on behalf of others. Where another person provides security for enforcement, it shall issue a guarantee to the court, and deliver a copy of the guarantee to the applicant. Where the enforcee or others provide property security, the corresponding formalities shall be handled by reference to the relevant provisions of the Civil Code.

他人提供执行保证的，应当向执行法院出具保证书，并将保证书副本送交申请执行人。被执行人或者他人提供财产担保的，应当参照民法典的有关规定办理相应手续。

**第四百六十九条** 被执行人在人民法院决定暂缓执行的期限届满后仍不履行义务的，人民法院可以直接执行担保财产，或者裁定执行

**Article 469** Where the enforcee fails to perform its obligations at the expiry of the suspended enforcement decided by the people's court, the people's court may directly enforce the security property, or enforce the surety's property, but the enforcement of the property of the surety shall be limited to the part of the property for which the surety shall fulfil its



担保人的财产，但执行担保人的财产以担保人应当履行义务部分的财产为限。

obligations.

**第四百七十条** 依照民事诉讼法第二百三十九条规定，执行中作为被执行人的法人或者其他组织分立、合并的，人民法院可以裁定变更后的法人或者其他组织为被执行人；被注销的，如果依照有关实体法的规定有权利义务承受人的，可以裁定该权利义务承受人为被执行人。

**Article 470** Subject to Article 239 of the Civil Procedure Law, the people's court may order the legal person or other organization after the change to be the enforcee if the legal person or other organization which is the enforcee is divided or merged during enforcement; if they are deregistered having a successor in rights and obligations under the relevant substantive law, such successor may be ruled to be the enforcee.

**第四百七十一条** 其他组织在执行中不能履行法律文书确定的义务的，人民法院可以裁定执行对该其他组织依法承担义务的法人或者公民个人的财产。

**Article 471** Where another organization cannot perform during the enforcement the obligations determined in the legal instrument, the people's court may enforce the property of a legal person or citizen which is subject to obligations to such other organization.

**第四百七十二条** 在执行中，作为被执行人的法人或者其他组织名称变更的，人民法院可以裁定变更后的法人或者其他组织为被执行人。

**Article 472** Where the name of the legal person or other organization which is the enforcee is changed during enforcement, the people's court may order the legal person or other organization after the change to be the enforcee.

**第四百七十三条** 作为被执行

**Article 473** Where a citizen who is the enforcee dies and his

人的公民死亡，其遗产继承人没有放弃继承的，人民法院可以裁定变更被执行人，由该继承人在遗产的范围内偿还债务。继承人放弃继承的，人民法院可以直接执行被执行人的遗产。

**inheritor does not give up the inheritance, the people's court may rule to change the enforcee and for such inheritor to repay the debts to the extent of the inheritance. Where the inheritor gives up the inheritance, the people's court may directly enforce the heritage of the enforcee.**

**第四百七十四条** 法律规定由人民法院执行的其他法律文书执行完毕后，该法律文书被有关机关或者组织依法撤销的，经当事人申请，适用民事诉讼法第二百四十条规定。

**Article 474** Where another legal instrument which is legally required to be enforced by the people's court is lawfully revoked by the relevant authority or organization after the enforcement is completed, Article 240 of the Civil Procedure Law is applicable at the request of a party.

**第四百七十五条** 仲裁机构裁决的事项，部分有民事诉讼法第二百四十四条第二款、第三款规定情形的，人民法院应当裁定对该部分不予执行。

**Article 475** Where part of the matters under the award rendered by the arbitration body falls within a circumstance under Paragraphs 2 and 3 of Article 244 of the Civil Procedure Law, the people's court shall rule to not enforce that part. Where the part which shall not be enforced is inseparable from other parts, the people's court shall rule to not enforce the arbitral award.

应当不予执行部分与其他部分不可分的，人民法院应当裁定不予执行仲裁裁决。

**第四百七十六条** 依照民事诉讼法第二百四十四条第二款、第三款规定，人民法院裁定不予执行仲

**Article 476** Subject to Paragraphs 2 and 3, Article 244 of the Civil Procedure Law, the people's court shall not admit the challenge to enforcement or reconsideration filed by a party after the people's court rules to not enforce the arbitral award.

裁裁决后，当事人对该裁定提出执行异议或者复议的，人民法院不予受理。当事人可以就该民事纠纷重新达成书面仲裁协议申请仲裁，也可以向人民法院起诉。

**The parties may re-enter into a written arbitration agreement in respect of such civil dispute to apply for arbitration or may alternatively file a suit with the people's court.**

**第四百七十七条** 在执行中，被执行人通过仲裁程序将人民法院查封、扣押、冻结的财产确权或者分割给案外人的，不影响人民法院执行程序的进行。

**Article 477** Where, during the enforcement, the enforcee by arbitration proceedings has a determination of ownership of, or divides with an outsider, the property seized, distrained or frozen by the people's court, the enforcement procedure by the people's court will not be affected. Where the outsider is dissatisfied, it may submit a challenge under Article 234 of the Civil Procedure Law.

案外人不服的，可以根据民事诉讼法第二百三十四条规定提出异议。

**第四百七十八条** 有下列情形之一的，可以认定为民事诉讼法第二百四十五条第二款规定的公证债权文书确有错误：

**Article 478** The notarized document of obligation set forth under Paragraph 2, Article 245 of the Civil Procedure Law can be held to be definitely erroneous in any of the following circumstances: 1. where the notarized document of obligation is a credit instrument that shall not be granted the effectiveness of enforcement;

（一）公证债权文书属于不得赋予强制执行效力的债权文书的；

2. where the enforcee is not present at the notarization itself or by proxy or otherwise violates the notarial procedures set forth under the law;

（二）被执行人一方未亲自或者未委托代理人到场公证等严重违反法律规定的公证程序的；

3. where the content of a notarized document of obligation is not consistent with the facts or violates the mandatory provisions of the law; or

4. where the notarized document of obligation does not specify that

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（三）公证债权文书的内容与事实不符或者违反法律强制性规定的；

the enforcee agrees to mandatory enforcement in the case of failure or incomplete fulfilment of obligations.

If the people's court determines that the enforcement of the said notarized document of obligation would be against the public interest, it shall deny enforcement.

（四）公证债权文书未载明被执行人不履行义务或者不完全履行义务时同意接受强制执行的。

After the enforcement of notarized document of obligation is denied, the parties and interested parties to the notary matters may file a suit in respect of the dispute over debts.

人民法院认定执行该公证债权文书违背社会公共利益的，裁定不予执行。

公证债权文书被裁定不予执行后，当事人、公证事项的利害关系人可以就债权争议提起诉讼。

**第四百七十九条** 当事人请求不予执行仲裁裁决或者公证债权文书的，应当在执行终结前向执行法院提出。

**Article 479** Where a party requests a court not to enforce an arbitral award or notarized instrument of a creditor's rights, such request shall be submitted to the court conducting the enforcement before the enforcement is terminated.

**第四百八十条** 人民法院应当在收到申请执行书或者移交执行书后十日内发出执行通知。

**Article 480** The people's court shall issue an enforcement notice within ten days after receipt of an enforcement application or a letter of transfer for enforcement. In addition to ordering the party subject to the enforcement to perform the obligations determined by a legal instrument, the court shall also notify the party of the payment for the interest for the delay of performance or the compensation for the delay of performance under the provisions of Article 260 of the Civil Procedure Law.

执行通知中除应责令被执行人履行法律文书确定的义务外，还应通知其承担民事诉讼法第二百六十

条规定的迟延履行利息或者迟延履行金。

**第四百八十一条** 申请执行人超过申请执行时效期间向人民法院申请强制执行的，人民法院应予受理。被执行人对申请执行时效期间提出异议，人民法院经审查异议成立的，裁定不予执行。

被执行人履行全部或者部分义务后，又以不知道申请执行时效期间届满为由请求执行回转的，人民法院不予支持。

**第四百八十二条** 对必须接受调查询问的被执行人、被执行人的法定代表人、负责人或者实际控制人，经依法传唤无正当理由拒不到场的，人民法院可以拘传其到场。

人民法院应当及时对被拘传人进行调查询问，调查询问的时间不得超过八小时；情况复杂，依法可能采取拘留措施的，调查询问的时间不得超过二十四小时。

**Article 481** Where an enforcement applicant applies to the people's court for enforcement exceeding the limitation period for enforcement applications, the people's court shall accept such application. Where the enforcee raises an objection to the limitation period for enforcement application, and the objection is established by the people's court after review, the people's court shall rule that the enforcement shall not be conducted. Where the enforcee requests an enforcement correction on the ground of not knowing the expiry of the limitation period for enforcement applications after it performs all or part of the obligations, such request shall not be supported by the people's court.

**Article 482** Where the enforcee, its legal representative, responsible person or actual controller who must be investigated and questioned refuses to be present in court without justified reasons after being summoned to court in accordance with the law, the people's court may summon such party to court by warrant. The people's court shall investigate and question the party summoned to court by warrant in a timely manner, and the time of investigation and questioning shall not exceed eight hours; where detention measures may be taken in accordance with the law under complex circumstances, the time of investigation and questioning shall not exceed 24 hours.

When the people's court takes the measures of summoning by warrant outside its own jurisdiction, the party subject to summon by warrant may be summoned to a local people's court by warrant, and the local people's court shall provide assistance in this regard.

人民法院在本辖区以外采取拘传措施时，可以将被拘传人拘传到当地人民法院，当地人民法院应予协助。

**第四百八十三条** 人民法院有权查询被执行人的身份信息与财产信息，掌握相关信息的单位和个人必须按照协助执行通知书办理。

**Article 483** The people's court has the right to inquire into the information concerning the identity and property of the enforcee, and organizations and individuals possessing the relevant information shall assist in the enforcement in accordance with a notice on the assistance in enforcement.

**第四百八十四条** 对被执行的财产，人民法院非经查封、扣押、冻结不得处分。对银行存款等各类可以直接扣划的财产，人民法院的扣划裁定同时具有冻结的法律效力。

**Article 484** No property subject to enforcement may be disposed of by the people's court without being seized, distrained or frozen. For bank deposits and other varieties of property which may be directly deducted or transferred, the ruling of the people's court on deducting or transferring such property shall have the legal effect of freezing thereof at the same time.

**第四百八十五条** 人民法院冻结被执行人的银行存款的期限不得超过一年，查封、扣押动产的期限不得超过两年，查封不动产、冻结其他财产权的期限不得超过三年。

**Article 485** The time limit for the people's court to freeze the bank deposits of the enforcee shall not exceed one year, while the time limit for the seizure and distraintment of movable property shall not exceed two years, with that for the seizure of immovable property and freezing of other property rights not exceeding three years. Where an enforcement applicant applies for an extension of the time limit, the people's court shall go through formalities for extending the time limit for the seizure, distraintment or freezing of property prior to the expiry of the time limit therefor, with the extended period not exceeding the time limit as provided for in the preceding paragraph.

申请执行人申请延长期限的，人民法院应当在查封、扣押、冻结期限届满前办理续行查封、扣押、冻结手续，续行期限不得超过前款

The people's court may also go through formalities for extending the time limit for the seizure, distraintment or freezing of property ex

规定的期限。

人民法院也可以依职权办理续行查封、扣押、冻结手续。

officio.

**第四百八十六条** 依照民事诉讼法第二百五十四条规定，人民法院在执行中需要拍卖被执行人财产的，可以由人民法院自行组织拍卖，也可以交由具备相应资质的拍卖机构拍卖。

**Article 486** According to the provisions of Article 254 of the Civil Procedure Law, where the people's court needs to sell the property of the enforcee at auction, such auction may be organized by the people's court itself or carried out by an auction agency with the corresponding qualifications. Where an auction is carried out by an auction agency, such auction shall be supervised by the people's court.

交拍卖机构拍卖的，人民法院应当对拍卖活动进行监督。

**第四百八十七条** 拍卖评估需要对现场进行检查、勘验的，人民法院应当责令被执行人、协助义务人予以配合。被执行人、协助义务人不予配合的，人民法院可以强制进行。

**Article 487** Where an auction appraisal requires on-site inspection or a survey, the people's court shall order the enforcee and parties with assistance obligations to cooperate in such inspection or survey. Where the enforcee and parties with assistance obligations fail to cooperate, the people's court may compulsorily carry out the inspection or survey.

**第四百八十八条** 人民法院在执行中需要变卖被执行人财产的，可以交有关单位变卖，也可以由人民法院直接变卖。

**Article 488** Where the people's court needs to sell the property of the enforcee in the course of enforcement, the property may be sold by the relevant entities, or directly by the people's court. Neither the people's court nor its staff members may buy the property so sold.

对变卖的财产，人民法院或者



其工作人员不得买受。

**第四百八十九条** 经申请执行人和被执行人同意，且不损害其他债权人合法权益和社会公共利益的，人民法院可以不经拍卖、变卖，直接将被执行人的财产作价交申请执行人抵偿债务。对剩余债务，被执行人应当继续清偿。

**Article 489** With the consent of an enforcement applicant and the enforcee, and without prejudice to the legitimate rights and interests of other creditors and the public interests of society, the people's court may directly fix a price for the property of the enforcee and deliver the property to the enforcement applicant for repayment of debts without selling the property at auction or selling it. For outstanding debts, the enforcee shall continue to make repayments.

**第四百九十条** 被执行人的财产无法拍卖或者变卖的，经申请执行人同意，且不损害其他债权人合法权益和社会公共利益的，人民法院可以将该项财产作价后交付申请执行人抵偿债务，或者交付申请执行人管理；申请执行人拒绝接收或者管理的，退回被执行人。

**Article 490** Where the property of the enforcee cannot be sold at auction or sold, the people's court may deliver the property to the enforcement applicant for repayment of debts or management of the property after fixing a price therefor; where the enforcement applicant refuses to take delivery of or manage the property, the property shall be returned to the enforcee.

**第四百九十一条** 拍卖成交或者依法定程序裁定以物抵债的，标的物所有权自拍卖成交裁定或者抵债裁定送达买受人或者接受抵债物的债权人时转移。

**Article 491** Where the subject matter of enforcement is sold at auction or is ruled to serve to offset the debt, the ownership of the subject matter shall be transferred at the time when the ruling on selling the subject matter at auction or the ruling on the subject matter serving to offset the debt is served on the buyer of the subject matter or the creditor who accepts the subject matter serving to offset the debt.

**第四百九十二条** 执行标的物为特定物的，应当执行原物。原物

**Article 492** Where the subject matter of enforcement is a specific object, the original object shall be subject to enforcement. Where such original object has indeed been

确已毁损或者灭失的，经双方当事人同意，可以折价赔偿。

双方当事人对折价赔偿不能协商一致，人民法院应当终结执行程序。申请执行人可以另行起诉。

**第四百九十三条** 他人持有法律文书指定交付的财物或者票证，人民法院依照民事诉讼法第二百五十六条第二款、第三款规定发出协助执行通知后，拒不转交的，可以强制执行，并可依照民事诉讼法第一百一十七条、第一百一十八条规定处理。

他人持有期间财物或者票证毁损、灭失的，参照本解释第四百九十二条规定处理。

他人主张合法持有财物或者票证的，可以根据民事诉讼法第二百三十四条规定提出执行异议。

**第四百九十四条** 在执行中，被执行人隐匿财产、会计账簿等资料的，人民法院除可依照民事诉讼

**damaged or lost, it may be reimbursed based on its estimated price with the consent of both parties involved.** Where both parties involved cannot reach consensus through consultation, the people's court shall terminate the enforcement procedure. The enforcement applicant may file a lawsuit separately.

**Article 493** Where another person who possesses the property or ticket which is designated by a legal instrument to be delivered refuses to deliver the same after the people's court issues a notice on assistance in enforcement in accordance with the provisions in Paragraphs 2 and 3 of Article 256 of the Civil Procedure Law, the people's court may conduct enforcement in accordance with the provisions in Articles 117 and 118 of the Civil Procedure Law. Where the property or ticket is damaged or lost in the period when another person possesses the same, enforcement shall be carried out with reference to the provisions in Article 492 of this Interpretation.

Where another person alleges that he/she legally possesses the property or ticket, an objection to the enforcement may be raised in accordance with the provisions in Article 234 of the Civil Procedure Law.

**Article 494** Where the enforcee conceals property, accounting books and other materials in enforcement, in addition to imposing punishments on such party in accordance with Item 6, Paragraph 1 of Article 114 of the Civil Procedure Law, the people's court shall also order such enforcee to hand over the

法第一百一十四条第一款第六项规定对其处理外，还应责令被执行人交出隐匿的财产、会计账簿等资料。被执行人拒不交出的，人民法院可以采取搜查措施。

**第四百九十五条** 搜查人员应当按规定着装并出示搜查令和工作证件。

**第四百九十六条** 人民法院搜查时禁止无关人员进入搜查现场；搜查对象是公民的，应当通知被执行人或者他的成年家属以及基层组织派员到场；搜查对象是法人或者其他组织的，应当通知法定代表人或者主要负责人到场。拒不到场的，不影响搜查。

搜查妇女身体，应当由女执行人员进行。

**第四百九十七条** 搜查中发现应当依法采取查封、扣押措施的财产，依照民事诉讼法第二百五十二条第二款和第二百五十四条规定办理。

**property, accounting books and other related materials. Where the enforcee refuses to hand over the property, accounting books and other related materials, the people's court may undertake search measures.**

**Article 495 Search officers shall be dressed as required and show the search warrant and their work credentials.**

**Article 496 When the people's court carries out a search, unrelated personnel shall be prohibited from entering the scene of the search; where a search object is a citizen, the enforcee or his/her adult family members and representatives of the grass-roots organization shall be notified to be present at the scene; where the search object is a legal person or other organization, its legal representative or primarily responsible person shall be notified to be present at the scene. The search shall not be affected in the case that the aforesaid parties refuse to be present. Where a woman's body is searched, such search shall be carried out by a female enforcement officer.**

**Article 497 Where property against which the measure of seizure or distraintment shall be taken is found in searches, such property shall be dealt with in accordance with the provisions in Paragraph 2 of Article 252 and Article 254 of the Civil Procedure Law.**

**第四百九十八条** 搜查应当制作搜查笔录，由搜查人员、被搜查人及其他在场人签名、捺印或者盖章。拒绝签名、捺印或者盖章的，应当记入搜查笔录。

**Article 498** Searches shall be recorded in writing, which shall be signed, fingerprinted or sealed by search officers, parties subject to the searches and others present at the scene.

Where the aforesaid parties refuse to sign, impress or seal the written record, such refusal shall be recorded in the written record.

**第四百九十九条** 人民法院执行被执行人对他人的到期债权，可以作出冻结债权的裁定，并通知该他人向申请执行人履行。

**Article 499** Where the people's court enforces a matured claim of the enforcee against another person, the people's court may render a ruling on freezing such claim and notify the other person of performing the obligations to the enforcement applicant. Where the other party has an objection to the matured claim, and the enforcement applicant requests enforcement of the part of the claim to which the enforcement applicant raises an objection, such request shall not be supported by the people's court. Where an interested party has an objection to the matured claim, the provisions of Article 234 of the Civil Procedure Law shall apply.

该他人对到期债权有异议，申请执行人请求对异议部分强制执行的，人民法院不予支持。利害关系人对到期债权有异议的，人民法院应当按照民事诉讼法第二百三十四条规定处理。

Where the other party denies the matured claim as determined by an effective legal instrument, such denial shall not be supported by the people's court.

对生效法律文书确定的到期债权，该他人予以否认的，人民法院不予支持。

**第五百条** 人民法院在执行中需要办理房产证、土地证、林权证、专利证书、商标证书、车船执照等有关财产权证照转移手续的，可以依照民事诉讼法第二百五十八

**Article 500** Where the people's court needs to go through the formalities for the transfer of real estate licenses, land certificates, forestland certificates, patent certificates, trademark certificates, vehicle and vessel licenses, and other related property right certificates, such formalities may be gone through under the provisions of Article 258 of the Civil Procedure Law.

条规定办理。

**第五百零一条** 被执行人不履行生效法律文书确定的行为义务，该义务可由他人完成的，人民法院可以选定代履行人；法律、行政法规对履行该行为义务有资格限制的，应当从有资格的人中选定。必要时，可以通过招标的方式确定代履行人。

申请执行人可以在符合条件的人中推荐代履行人，也可以申请自己代为履行，是否准许，由人民法院决定。

**第五百零二条** 代履行费用的数额由人民法院根据案件具体情况确定，并由被执行人在指定期限内预先支付。被执行人未预付的，人民法院可以对该费用强制执行。

代履行结束后，被执行人可以查阅、复制费用清单以及主要凭证。

**第五百零三条** 被执行人不履行

**Article 501** Where the enforcee does not perform the obligation of conduct as determined by an effective legal instrument, and such obligation may be performed by another person, the people's court may select a person who shall perform the obligation on behalf of the enforcee; where laws and administrative regulations place restrictions on the qualifications of the person who shall perform the obligation of conduct, such person shall be selected from persons with the relevant qualifications. When necessary, the person who shall perform the obligation on behalf of the enforcee shall be determined by way of bidding. An enforcement applicant may recommend a person from those who meet the conditions for performing the obligation on behalf of the enforcee, or apply to serve as the person who shall perform the obligation on behalf of the enforcee, and such recommendation or application is subject to the decision of the people's court.

**Article 502** The amount of fees for the performance of the obligation on behalf of the enforcee shall be determined by the people's court according to the specific circumstances of a case, and such fees shall be paid in advance by the enforcee within a specified time limit. Where the enforcee fails to pay the fees in advance, the people's court may enforce the payment of such fees. After the performance of the obligation on behalf of the enforcee, the enforcee may consult or copy the list of fees and the main vouchers.

**Article 503** Where the enforcee does not perform the conduct specified by a legal instrument, and such conduct can only be

行法律文书指定的行为，且该项行为只能由被执行人完成的，人民法院可以依照民事诉讼法第一百一十四条第一款第六项规定处理。

被执行人在人民法院确定的履行期间内仍不履行的，人民法院可以依照民事诉讼法第一百一十四条第一款第六项规定再次处理。

**第五百零四条** 被执行人迟延履行履行的，迟延履行期间的利息或者迟延履行金自判决、裁定和其他法律文书指定的履行期间届满之日起计算。

**第五百零五条** 被执行人未按判决、裁定和其他法律文书指定的期间履行履行非金钱给付义务的，无论是否已给申请执行人造成损失，都应当支付迟延履行金。已经造成损失的，双倍补偿申请执行人已经受到的损失；没有造成损失的，迟延履行金可以由人民法院根据具体案件情况决定。

**第五百零六条** 被执行人为公

**performed by the enforcee, the people's court may impose punishments on such party in accordance with the provisions in Item 6, Paragraph 1 of Article 114 of the Civil Procedure Law.** Where the enforcee still does not perform the obligation within the performance period determined by the people's court, the people's court may impose punishments again in accordance with the provisions in Item 6, Paragraph 1 of Article 114 of the Civil Procedure Law.

**Article 504** Where the enforcee delays performance, the interest incurred in the period during which the performance is delayed or the compensation for delayed performance shall be calculated from the date of expiry of the period of performance specified by a judgment, ruling or other legal instrument.

**Article 505** Where the enforcee fails to perform its/his non-monetary payment obligation within the period specified by a judgment, ruling or other legal instrument, and whether it has caused losses to the enforcement applicant, it/he shall pay compensation for its/his delayed performance. Where losses have already been caused, the enforcement applicant shall be compensated twice the losses it/he has suffered; where no loss has been caused, the compensation for delayed performance may be determined by the people's court according to the specific circumstances of the case.

**Article 506** Where other creditors of the enforcee who have



民或者其他组织，在执行程序开始后，被执行人的其他已经取得执行依据的债权人发现被执行人的财产不能清偿所有债权的，可以向人民法院申请参与分配。

对人民法院查封、扣押、冻结的财产有优先权、担保物权的债权人，可以直接申请参与分配，主张优先受偿权。

#### **第五百零七条** 申请参与分

配，申请人应当提交申请书。申请书应当写明参与分配和被执行人不能清偿所有债权的事实、理由，并附有执行依据。

参与分配申请应当在执行程序开始后，被执行人的财产执行终结前提出。

#### **第五百零八条** 参与分配执行

中，执行所得价款扣除执行费用，并清偿应当优先受偿的债权后，对于普通债权，原则上按照其占全部申请参与分配债权数额的比例受偿。清偿后的剩余债务，被执行人

**obtained a basis for the enforcement find that the property of the enforcee cannot satisfy all creditors' claims after the enforcement procedure begins in a case where the enforcee is a citizen or other organization, they may apply to the people's court to participate in the distribution of the property.** Creditors who have preemptive rights or security interests over property that is seized, distrained or frozen may directly apply to participate in the distribution of such property and claim their priority to compensation.

**Article 507 To apply to participate in the distribution of property, the applicant shall submit an application in writing. The application shall explicitly state the facts of and reasons for the participation in the distribution and the incapability of the enforcee to satisfy all creditors' claims, with the basis for enforcement attached.** An application to participate in the distribution of property shall be filed after the enforcement procedure begins and before the enforcement of the property of the enforcee ends.

**Article 508 In the participation in the distribution of property subject to enforcement, the enforcement fees shall be firstly deducted from the proceeds from the enforcement of the property, and after the claims of creditors entitled to priority repayment are satisfied, the claims of ordinary creditors shall be satisfied according to the proportions of their claims in all the claims of creditors applying for participation in the distribution of property. The outstanding debts shall continue to be repaid by the enforcee after the repayment. Where**



应当继续清偿。债权人发现被执行人有其他财产的，可以随时请求人民法院执行。

**creditors find that the enforcer has other property, the creditors may, at any time, request the court for enforcement in relation to such property.**

**第五百零九条** 多个债权人对执行财产申请参与分配的，执行法院应当制作财产分配方案，并送达各债权人和被执行人。债权人或者被执行人对分配方案有异议的，应当自收到分配方案之日起十五日内向执行法院提出书面异议。

**Article 509** Where multiple creditors apply to participate in the distribution of property subject to enforcement, the enforcement court shall prepare a plan for the distribution of the property and serve such plan on each creditor and the enforcer. Where the creditors and the enforcer have objections to the distribution plan, they shall file written objections with the enforcement court within 15 days after receipt of the distribution plan.

**第五百一十条** 债权人或者被执行人对分配方案提出书面异议的，执行法院应当通知未提出异议的债权人、被执行人。

**Article 510** Where creditors or parties subject to enforcement raise written objections to the distribution plan, the creditors and parties subject to enforcement who fail to raise an objection shall be notified by the enforcement court. Where the creditors and parties subject to enforcement who fail to raise an objection fail to raise an objection within 15 days after they are notified, the enforcement court shall distribute the property after reviewing and revising the distribution plan based on the opinions of the opponents; where the creditors and parties subject to enforcement raise objections, the opponents shall be notified. Opponents may, within 15 days after receipt of the notification, file a lawsuit against the creditors or parties subject to enforcement who raise written objections with the enforcement court; where the opponents fail to file a lawsuit within the prescribed time limit, the enforcement court shall distribute the property according to the original distribution plan.

未提出异议的债权人、被执行人自收到通知之日起十五日内未提出反对意见的，执行法院依异议人的意见对分配方案审查修正后进行分配；提出反对意见的，应当通知异议人。异议人可以自收到通知之日起十五日内，以提出反对意见的债权人、被执行人为被告，向执行法院提起诉讼；异议人逾期未提起

Where the property subject to enforcement is distributed during the litigation, the enforcement court shall escrow the funds equivalent to the amount of the creditors' rights in question.

诉讼的，执行法院按照原分配方案  
进行分配。

诉讼期间进行分配的，执行法  
院应当提存与争议债权数额相应的  
款项。

**第五百一十一条** 在执行中，  
作为被执行人的企业法人符合企业  
破产法第二条第一款规定情形的，  
执行法院经申请执行人之一或者被  
执行人同意，应当裁定中止对该被  
执行人的执行，将执行案件相关材  
料移送被执行人住所地人民法院。

**Article 511** In enforcement, where an enterprise as legal person which serves as the enforcee falls under the circumstance as provided in Paragraph 1 of Article 2 of the Enterprise Bankruptcy Law, the enforcement court shall, with the consent of one of the enforcement applicants or the enforcee, suspend the enforcement against the enforcee, and transfer the relevant materials of the enforcement case to the people's court where the enforcee has its/his domicile.

**第五百一十二条** 被执行人住  
所地人民法院应当自收到执行案件  
相关材料之日起三十日内，将是否  
受理破产案件的裁定告知执行法  
院。不予受理的，应当将相关案件  
材料退回执行法院。

**Article 512** The people's court in the place where the enforcee has its/his domicile shall, within 30 days from the date of receipt of the relevant materials of the enforcement case, inform the enforcement court of its ruling on whether it shall accept the bankruptcy case. Where the bankruptcy case is not accepted, the relevant case materials shall be returned to the enforcement court.

**第五百一十三条** 被执行人住  
所地人民法院裁定受理破产案件  
的，执行法院应当解除对被执行人  
财产的保全措施。被执行人住所地  
人民法院裁定宣告被执行人破产

**Article 513** Where the people's court in the place where the enforcee has its/his domicile rules to accept the bankruptcy case, the enforcement court shall terminate the conservatory measures taken against the property of the enforcee. Where the people's court in the place where the enforcee has its/his domicile rules that the enforcee shall be declared bankrupt, the enforcement court shall terminate the

的，执行法院应当裁定终结对该被执行人的执行。

被执行人住所地人民法院不受理破产案件的，执行法院应当恢复执行。

**enforcement against the enforcee.** Where the people's court in the place where the enforcee has its/his domicile does not accept the bankruptcy case, the enforcement court shall resume its enforcement.

**第五百一十四条** 当事人不同意移送破产或者被执行人住所地人民法院不受理破产案件的，执行法院就执行变价所得财产，在扣除执行费用及清偿优先受偿的债权后，对于普通债权，按照财产保全和强制执行中查封、扣押、冻结财产的先后顺序清偿。

**Article 514** Where the parties do not agree to the transfer of a bankruptcy case or that the people's court in the place where the enforcee has its/his domicile does not accept the bankruptcy case, the enforcement court shall firstly deduct the enforcement fees from the property gained from the enforcement and use such property to satisfy the claims of creditors entitled to priority repayment, and the claims of ordinary creditors shall be satisfied using property in the sequential order of property preserved, and property seized, distrained or frozen in the enforcement.

**第五百一十五条** 债权人根据民事诉讼法第二百六十一条规定请求人民法院继续执行的，不受民事诉讼法第二百四十六条规定申请执行时效期间的限制。

**Article 515** Where a creditor, in accordance with the provisions in Article 261 of the Civil Procedure Law, requests the people's court to continue enforcement, such request shall not be restricted by the time limit for applying for enforcement as provided in Article 239 of the Civil Procedure Law.

**第五百一十六条** 被执行人不履行法律文书确定的义务的，人民法院除对被执行人予以处罚外，还可以根据情节将其纳入失信被执行人名单，将被执行人不履行或者不

**Article 516** Where the enforcee does not perform the obligations as determined by a legal instrument, the people's court may, in addition to imposing punishment on such enforcee, include such party in the list of parties who are subject to enforcement and have lost their credit according to the circumstances, and inform the party's employer, credit information service agencies and other related institutions of

完全履行义务的信息向其所在单位、征信机构以及其他相关机构通报。

**the information concerning the non-performance by the enforcee or the incomplete performance of its/his obligation.**

**第五百一十七条** 经过财产调查未发现可供执行的财产，在申请执行人签字确认或者执行法院组成合议庭审查核实并经院长批准后，可以裁定终结本次执行程序。

**Article 517** Where no property that may be enforced is found through property investigation, the enforcement court may terminate the enforcement procedure after such termination is confirmed and signed by the enforcement applicant or approved by the president of the court after the court forms a collegiate bench for review thereof. Where the enforcement applicant finds that the enforcee has property that may be enforced after the enforcement is terminated in accordance with the provisions in the preceding paragraph, the applicant may apply for enforcement again. The second application for enforcement shall not be restricted by the time limit for an enforcement application.

依照前款规定终结执行后，申请执行人发现被执行人有可供执行财产的，可以再次申请执行。再次申请不受申请执行时效期间的限制。

**第五百一十八条** 因撤销申请而终结执行后，当事人在民事诉讼法第二百四十六条规定的申请执行时效期间内再次申请执行的，人民法院应当受理。

**Article 518** Where after enforcement is terminated due to withdrawal of an enforcement application one party applies for enforcement again within the time limit for enforcement application as provided in Article 246 of the Civil Procedure Law, the people's court shall accept such application.

**第五百一十九条** 在执行终结六个月内，被执行人或者其他人对已执行的标的有妨害行为的，人民法院可以依申请排除妨害，并可以依照民事诉讼法第一百一十四条规

**Article 519** Where within six months after the termination of enforcement the enforcee or any other person is found to have caused nuisance to the subject matter which has been enforced, the people's court may remove such nuisance upon application, and may impose punishments in accordance with the provisions in Article 114 of the Civil Procedure Law. Where the nuisance results in losses to enforcement creditors

定进行处罚。因妨害行为给执行债权人或者其他造成损失的，受害人可以另行起诉。

**and others, the aggrieved parties may sue separately.**

## 二十二、涉外民事诉讼程序的特别规定

## Chapter XXII Special Provisions on Foreign-related Civil Proceedings

**第五百二十条** 有下列情形之一的，人民法院可以认定为涉外民事案件：

**Article 520** A case which falls under any of the following circumstances shall be deemed a foreign-related civil case by the people's court: 1. where either party or both parties involved in the case are foreigners, stateless persons, foreign enterprises or organizations;

（一）当事人一方或者双方是外国人、无国籍人、外国企业或者组织的；

2. where either party or both parties involved in the case have their habitual residence outside the territory of the People's Republic of China;

（二）当事人一方或者双方的经常居所地在中华人民共和国领域外的；

3. where either party the subject matter involved is outside the territory of the People's Republic of China;

（三）标的物在中华人民共和国领域外的；

4. where either party the legal fact that establishes, changes or terminates the civil relation occurs outside the territory of the People's Republic of China; or

（四）产生、变更或者消灭民事关系的法律事实发生在中华人民共和国领域外的；

5. where either party there are other circumstances under which a case may be deemed a foreign-related civil case.

（五）可以认定为涉外民事案件的其他情形。

**第五百二十一条** 外国人参加诉讼，应当向人民法院提交护照等用以证明自己身份的证件。

外国企业或者组织参加诉讼，向人民法院提交的身份证明文件，应当经所在国公证机关公证，并经中华人民共和国驻该国使领馆认证，或者履行中华人民共和国与该所在国订立的有关条约中规定的证明手续。

代表外国企业或者组织参加诉讼的人，应当向人民法院提交其有权作为代表人参加诉讼的证明，该证明应当经所在国公证机关公证，并经中华人民共和国驻该国使领馆认证，或者履行中华人民共和国与该所在国订立的有关条约中规定的证明手续。

本条所称的“所在国”，是指外国企业或者组织的设立登记地国，也可以是办理了营业登记手续的第三国。

**Article 521** A foreigner shall submit his/her passport and other credentials proving his/her identity to the people's court to participate in a lawsuit. Identity certificates submitted by a foreign enterprise or organization participating in a lawsuit shall be notarized by a notary organ in the country where the enterprise or organization is located and authenticated by the embassy or consulate of the People's Republic of China in the country, or the enterprise or organization shall go through the identity certification formalities as stipulated in the relevant treaty concluded by and between the People's Republic of China and the country.

The person participating in a lawsuit on behalf of a foreign enterprise or organization shall submit proof evidencing that he/she has the right to serve as the representative of the foreign enterprise or organization to participate in the lawsuit, and such proof shall be notarized by a notary organ in the country where the foreign enterprise or organization is located and authenticated by the embassy or consulate of the People's Republic of China in the country, or the person shall go through the identity certification formalities as stipulated in the relevant treaty concluded by and between the People's Republic of China and the country.

The "country where a foreign enterprise or organization is located" as mentioned herein refers to the country where the foreign enterprise or organization is registered for its establishment, or a third country where the business registration formalities are completed.

**第五百二十二条** 依照民事诉

**Article 522** Where notarization and authentication formalities



讼法第二百七十一条以及本解释第五百二十一条规定，需要办理公证、认证手续，而外国当事人所在国与中华人民共和国没有建立外交关系的，可以经该国公证机关公证，经与中华人民共和国有外交关系的第三国驻该国使领馆认证，再转由中华人民共和国驻该第三国使领馆认证。

**is required in accordance with the provisions in Article 271 of the Civil Procedure Law and Article 521 of this Interpretation, but the country where the foreign litigant is located has not established diplomatic relations with the People's Republic of China, the relevant documents may be notarized by a notary organ of the country and authenticated by the embassy or consulate of a third country which has established diplomatic relations with the People's Republic of China in the country where the foreign litigant is located, and then transferred to the embassy or consulate of the People's Republic of China in that third country for authentication.**

**第五百二十三条** 外国人、外国企业或者组织的代表人在人民法院法官的见证下签署授权委托书，委托代理人进行民事诉讼的，人民法院应予认可。

**Article 523** Where the representative of a foreigner, foreign enterprise or organization signs a power of attorney witnessed by a judge of the people's court to entrust an agent to institute civil proceedings, the power of attorney shall be recognized by the people's court.

**第五百二十四条** 外国人、外国企业或者组织的代表人在中华人民共和国境内签署授权委托书，委托代理人进行民事诉讼，经中华人民共和国公证机构公证的，人民法院应予认可。

**Article 524** Where the representative of a foreigner, foreign enterprise or organization signs a power of attorney within the territory of the People's Republic of China to entrust an agent to institute civil proceedings, and the power of attorney is notarized by a notary organ of the People's Republic of China, the power of attorney shall be recognized by the people's court.

**第五百二十五条** 当事人向人民法院提交的书面材料是外文的，应当同时向人民法院提交中文翻译

**Article 525** Where the written materials submitted by a litigant to the people's court are written in a foreign language, the litigant shall at the same time submit a copy of the Chinese translation of the materials to the people's court. Where the litigants have an objection to the copy of the Chinese translation of



件。

当事人对中文翻译件有异议的，应当共同委托翻译机构提供翻译文本；当事人对翻译机构的选择不能达成一致的，由人民法院确定。

the materials, they shall jointly entrust a translation agency to provide a translated text; and where the litigants cannot reach consensus on the choice of a translation agency, such translation agency shall be determined by the people's court.

#### **第五百二十六条 涉外民事诉**

讼中的外籍当事人，可以委托本国人为诉讼代理人，也可以委托本国律师以非律师身份担任诉讼代理人；外国驻华使领馆官员，受本国公民的委托，可以以个人名义担任诉讼代理人，但在诉讼中不享有外交或者领事特权和豁免。

**Article 526 Foreign litigants in foreign-related civil proceedings may entrust their nationals to serve as their agents ad litem, or entrust lawyers of their home countries to serve as their non-lawyer agents ad litem; officers of embassies or consulates of foreign countries in China may, upon entrustment of the citizens of their home countries, serve as agents ad litem of such citizens on a personal basis, but they are not entitled to diplomatic or consular privileges and immunity in the proceedings.**

#### **第五百二十七条 涉外民事诉**

讼中，外国驻华使领馆授权其本馆官员，在作为当事人的本国国民不在中华人民共和国领域内的情况下，可以以外交代表身份为其本国国民在中华人民共和国聘请中华人民共和国律师或者中华人民共和国公民代理民事诉讼。

**Article 527 In foreign-related civil proceedings, when the litigant, a citizen of a foreign country, is not within the territory of the People's Republic of China, an officer of the embassy or consulate of the foreign country in China may, upon authorization of the embassy or consulate and in his/her capacity as a diplomatic representative, hire a lawyer of the People's Republic of China or a citizen of the People's Republic of China to represent the litigant in the civil proceedings.**

#### **第五百二十八条 涉外民事诉**

**Article 528 In foreign-related civil proceedings, where both**

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讼中，经调解双方达成协议，应当制发调解书。当事人要求发给判决书的，可以依协议的内容制作判决书送达当事人。

**parties involved reach an agreement upon mediation, a mediation agreement shall be prepared and issued. Where the parties involved request issuance of a judgment, a judgment may be prepared based on the agreement and served on the parties involved.**

**第五百二十九条** 涉外合同或者其他财产权益纠纷的当事人，可以书面协议选择被告住所地、合同履行地、合同签订地、原告住所地、标的物所在地、侵权行为地等与争议有实际联系地点的外国法院管辖。

**Article 529** Parties involved in disputes over foreign-related contracts or other property rights may conclude a written agreement on their choice of jurisdiction of a foreign court in the place which is actually associated with such disputes, such as the place where the defendant is domiciled, the place where a contract is performed, the place where a contract is signed, the place where the plaintiff is domiciled, the place where the subject matter is located, or the place where the infringing act is committed, etc. According to the provisions in Articles 34 and 273 of the Civil Procedure Law, for cases which are under the exclusive jurisdiction of a court of the People's Republic of China, the parties involved may not agree on the choice of jurisdiction of a foreign court, unless the parties agree on the choice of arbitration.

根据民事诉讼法第三十四条和第二百七十三条规定，属于中华人民共和国法院专属管辖的案件，当事人不得协议选择外国法院管辖，但协议选择仲裁的除外。

**第五百三十条** 涉外民事案件同时符合下列情形的，人民法院可以裁定驳回原告的起诉，告知其向更方便的外国法院提起诉讼：

（一）被告提出案件应由更方便外国法院管辖的请求，或者提出管

**Article 530** The people's court may rule to reject a lawsuit and instruct the parties to file the lawsuit with a foreign court which is more convenient if the foreign-related civil case meets all the following conditions concurrently: 1. where the defendant raises a request that the case shall be under the jurisdiction of a foreign court which is more convenient, or raises an objection to the jurisdiction;

2. where there is no agreement on the choice of jurisdiction of a court of the People's Republic of China between the parties

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管辖异议；

（二）当事人之间不存在选择中华人民共和国法院管辖的协议；

（三）案件不属于中华人民共和国法院专属管辖；

（四）案件不涉及中华人民共和国国家、公民、法人或者其他组织的利益；

（五）案件争议的主要事实不是发生在中华人民共和国境内，且案件不适用中华人民共和国法律，人民法院审理案件在认定事实和适用法律方面存在重大困难；

（六）外国法院对案件享有管辖权，且审理该案件更加方便。

involved;

3. where the case is not under the exclusive jurisdiction of a court of the People's Republic of China;

4. where the case does not involve the interests of the State, citizens, legal persons or other organizations of the People's Republic of China;

5. where the major facts over which the case has disputes did not occur within the territory of the People's Republic of China, and the laws of the People's Republic of China are not applicable to the case, as well as there are significant difficulties in the determination of facts and application of laws; and

6. where a foreign court has jurisdiction of the case, and it is more convenient for the foreign court to hear the case.

**第五百三十一条** 中华人民共和国法院和外国法院都有管辖权的案件，一方当事人向外国法院起诉，而另一方当事人向中华人民共和国法院起诉的，人民法院可予受理。判决后，外国法院申请或者当事人请求人民法院承认和执行外国

**Article 531** Where both a court in the People's Republic of China and a foreign court have jurisdiction over a case, and a party involved files a lawsuit with the foreign court while the other party files a lawsuit with the court in the People's Republic of China, the people's court may accept the case. Where the foreign court or a party applies to the people's court for recognition and enforcement of the judgment and ruling of the case which is made by the foreign court after the people's court renders its judgment of the case, such application shall not be approved, unless it is otherwise

法院对本案作出的判决、裁定的，不予准许；但双方共同缔结或者参加的国际条约另有规定的除外。

外国法院判决、裁定已经被人民法院承认，当事人就同一争议向人民法院起诉的，人民法院不予受理。

**provided in an international treaty jointly concluded or participated in by the foreign country and China. Where the judgment or ruling of a foreign court has already been recognized by the people's court, and a party involved files a lawsuit for the same dispute with the people's court, the people's court shall not accept the case.**

**第五百三十二条** 对在中华人民共和国领域内没有住所的当事人，经用公告方式送达诉讼文书，公告期满不应诉，人民法院缺席判决后，仍应当将裁判文书依照民事诉讼法第二百七十四条第八项规定公告送达。自公告送达裁判文书满三个月之日起，经过三十日的上诉期当事人没有上诉的，一审判决即发生法律效力。

**Article 532 After the people's court renders a default judgment in a case where one party fails to respond to the lawsuit at the expiry of the period for service of litigation documents by way of public announcement, the people's court shall still serve the judgment on such party by way of public announcement in accordance with the provisions in Item 8 of Article 274 of the Civil Procedure Law. The judgment of first instance shall come into force 30 days after the expiry of three months from the date on which the judgment is served on the party by way of public announcement if the party fails to institute an appeal within the time limit of 30 days.**

**第五百三十三条** 外国人或者外国企业、组织的代表人、主要负责人在中华人民共和国领域内的，人民法院可以向该自然人或者外国企业、组织的代表人、主要负责人送达。

**Article 533 Where a foreigner, the representative or primarily responsible person of a foreign enterprise or organization is within the territory of the People's Republic of China, the people's court may serve the litigation documents on such natural person or the representative or primarily responsible person of the foreign enterprise or organization. The primarily responsible person of a foreign enterprise or organization includes the directors, supervisors and senior managers of the enterprise or organization.**

外国企业、组织的主要负责人

包括该企业、组织的董事、监事、

高级管理人员等。

**第五百三十四条** 受送达人所在

国允许邮寄送达的，人民法院可以邮寄送达。

邮寄送达时应当附有送达回证。受送达人未在送达回证上签收但在邮件回执上签收的，视为送达，签收日期为送达日期。

自邮寄之日起满三个月，如果未收到送达的证明文件，且根据各种情况不足以认定已经送达的，视为不能用邮寄方式送达。

**第五百三十五条** 人民法院一

审时采取公告方式向当事人送达诉讼文书的，二审时可径行采取公告方式向其送达诉讼文书，但人民法院能够采取公告方式之外的其他方式送达的除外。

**第五百三十六条** 不服第一审

人民法院判决、裁定的上诉期，对

**Article 534** Where the country where a person on whom litigation documents are served allows service by mail, the people's court may serve the litigation documents on such person by mail. Proof of service shall be attached to the litigation documents in the service. Where the person on whom litigation documents are served fails to sign the proof of service to acknowledge receipt of the litigation documents but signs the return receipt, the litigation documents shall be deemed to have been served on such person, and the signing date shall be the date of service.

Where the people's court fails to receive any proof evidencing the service of the litigation documents within three months after the date on which the litigation documents are mailed, and it is insufficient to determine the service is effected based on various circumstances, the litigation documents shall be deemed to be unable to be served by mail.

**Article 535** Where the people's court serves litigation documents on the parties by way of public announcement in the trial of first instance, it may, in the trial of second instance, directly adopt the public announcement approach to serve the litigation documents on the parties, unless the people's court can adopt other service approaches other than the public announcement approach.

**Article 536** The time limit for instituting an appeal by the party who is not satisfied with the judgment or ruling rendered by the people's court of first instance and has a domicile within the territory of the People's Republic of China shall be subject

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在中华人民共和国领域内有住所的当事人，适用民事诉讼法第一百七十一条规定的期限；对在中华人民共和国领域内没有住所的当事人，适用民事诉讼法第二百七十六条规定的期限。当事人的上诉期均已届满没有上诉的，第一审人民法院的判决、裁定即发生法律效力。

**to the time limit as provided in Article 171 of the Civil Procedure Law; for one party who does not have a domicile within the territory of the People's Republic of China, the time limit as provided in Article 276 of the Civil Procedure Law shall apply. If all the parties to a case fail to institute an appeal at the expiry of the time limits for instituting an appeal, the judgment or ruling rendered by the people's court of first instance shall be legally effective.**

**第五百三十七条** 人民法院对涉外民事案件的当事人申请再审进行审查的期间，不受民事诉讼法第二百一十一条规定的限制。

**Article 537** The time limit for the people's court to review the application of one party in a foreign-related civil case for a retrial is not subject to the provisions of Article 211 of the Civil Procedure Law.

**第五百三十八条** 申请人向人民法院申请执行中华人民共和国涉外仲裁机构的裁决，应当提出书面申请，并附裁决书正本。如申请人为外国当事人，其申请书应当用中文文本提出。

**Article 538** Where an applicant applies to the people's court for enforcement of an arbitral award rendered by a foreign-related arbitration agency in the People's Republic of China, the applicant shall submit a written application with the original arbitral award attached thereto. If the applicant is a foreign party involved in the case, the application shall be written in Chinese text.

**第五百三十九条** 人民法院强制执行涉外仲裁机构的仲裁裁决时，被执行人以有民事诉讼法第二百八十一条第一款规定的情形为由提出抗辩的，人民法院应当对被执

**Article 539** When the people's court enforces an arbitral award rendered by a foreign-related arbitration agency, and the enforcee raises a defense on the ground that the arbitral award falls under the circumstance as provided in Paragraph 1 of Article 281 of the Civil Procedure Law, the people's court shall review the defense of the enforcee and render its ruling on whether the arbitral award shall be enforced or not based on the findings of the review.



行人的抗辩进行审查，并根据审查结果裁定执行或者不予执行。

**第五百四十条** 依照民事诉讼法第二百七十九条规定，中华人民共和国涉外仲裁机构将当事人的保全申请提交人民法院裁定的，人民法院可以进行审查，裁定是否进行保全。裁定保全的，应当责令申请人提供担保，申请人不提供担保的，裁定驳回申请。

当事人申请证据保全，人民法院经审查认为无需提供担保的，申请人可以不提供担保。

**第五百四十一条** 申请人向人民法院申请承认和执行外国法院作出的发生法律效力判决、裁定，应当提交申请书，并附外国法院作出的发生法律效力判决、裁定正本或者经证明无误的副本以及中文译本。外国法院判决、裁定为缺席判决、裁定的，申请人应当同时提交该外国法院已经合法传唤的证明文件，但判决、裁定已经对此予以

**Article 540** Where a foreign-related arbitration agency of the People's Republic of China submits a preservation application of a party to the people's court for its ruling in accordance with the provisions of Article 279 of the Civil Procedure Law, the people's court may review the application and rule on whether the preservation application shall be approved. If the people's court rules to grant approval, it shall order the preservation applicant to provide a guarantee or shall rule to reject the application if the applicant fails to provide a guarantee. Where a party applies for evidence preservation, and the people's court deems it not necessary for the applicant to provide a guarantee, the applicant may not provide a guarantee.

**Article 541** An applicant who applies to the people's court for recognition and enforcement of a legally effective judgment or ruling rendered by a foreign court shall submit an application with the original legally effective judgment or ruling or its authenticated counterparty and its Chinese translation attached thereto. Where the judgment or ruling rendered by the foreign court is a default judgment or ruling, the applicant shall at the same time submit proof evidencing that the foreign court has legally summoned the parties to be present in court, unless it has already been explicitly explained in the judgment or ruling. Where an international treaty concluded or participated in by the People's Republic of China contains provisions on the submission of documents, such provisions shall apply.



明确说明的除外。

中华人民共和国缔结或者参加  
的国际条约对提交文件有规定的，  
按照规定办理。

**第五百四十二条** 当事人向中  
华人民共和国有管辖权的中级人民  
法院申请承认和执行外国法院作出  
的发生法律效力的判决、裁定的，  
如果该法院所在国与中华人民共和  
国没有缔结或者共同参加国际条  
约，也没有互惠关系的，裁定驳回  
申请，但当事人向人民法院申请承  
认外国法院作出的发生法律效力的  
离婚判决的除外。

承认和执行申请被裁定驳回  
的，当事人可以向人民法院起诉。

**第五百四十三条** 对临时仲裁  
庭在中华人民共和国领域外作出的  
仲裁裁决，一方当事人向人民法院  
申请承认和执行的，人民法院应当  
依照民事诉讼法第二百九十条规定  
处理。

**Article 542** Where a party applies to a competent intermediate people's court in the People's Republic of China for recognition and enforcement of a judgment or ruling which is rendered by a foreign court and is legally effective, and the country where the court is located does not conclude or participate in any international treaty or has reciprocal relations with the People's Republic of China, the intermediate people's court shall reject such application, unless the party applies to the people's court for enforcement of a divorce judgment which is rendered by a foreign court and is legally effective. Where an application for recognition and enforcement is rejected, one party may file a lawsuit with the people's court.

**Article 543** Where one party applies to the people's court for recognition and enforcement of an arbitral award rendered by an ad hoc arbitration tribunal outside the territory of the People's Republic of China, the provisions of Article 290 of the Civil Procedure Law shall apply.

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**第五百四十四条** 对外国法院

作出的发生法律效力判决、裁定或者外国仲裁裁决，需要中华人民共和国法院执行的，当事人应当先向人民法院申请承认。人民法院经审查，裁定承认后，再根据民事诉讼法第三编的规定予以执行。

当事人仅申请承认而未同时申请执行执行的，人民法院仅对应否承认进行审查并作出裁定。

**第五百四十五条** 当事人申请

承认和执行外国法院作出的发生法律效力判决、裁定或者外国仲裁裁决的期间，适用民事诉讼法第二百四十六条的规定。

当事人仅申请承认而未同时申请执行执行的，申请执行的期间自人民法院对承认申请作出的裁定生效之日起重新计算。

**第五百四十六条** 承认和执行

外国法院作出的发生法律效力判决、裁定或者外国仲裁裁决的案件，人民法院应当组成合议庭进行

**Article 544** Where a legally effective judgment or ruling

rendered by a foreign court or a foreign arbitral award needs to be enforced by a court in the People's Republic of China, one party shall firstly apply to the people's court for the recognition of the judgment, ruling or arbitral award. After the people's court recognizes the same after review, the enforcement shall be carried out in accordance with the provisions in Division Three of the Civil Procedure

Law. Where the party only applies for recognition without applying for enforcement at the same time, the people's court shall only review whether the judgment, ruling or arbitral award shall be recognized and make a ruling accordingly.

**Article 545** The provisions of Article 246 of the Civil Procedure Law shall apply to the time limit for the party to apply for recognition and enforcement of legally effective judgments or rulings rendered by foreign courts or foreign arbitral awards.

Where the party only applies for recognition without applying for enforcement at the same time, the time limit for the enforcement application shall be re-counted from the date when the ruling rendered by the people's court on the recognition application takes effect.

**Article 546** The people's court shall form a collegiate bench to review cases of recognition and enforcement of legally effective judgments or rulings rendered by foreign courts or foreign arbitral awards. The people's court shall serve an application in writing on the respondent. The respondent may state

审查。

人民法院应当将申请书送达被申请人。被申请人可以陈述意见。

人民法院经审查作出的裁定，一经送达即发生法律效力。

his opinions.

For a ruling rendered by the people's court after review, once it is served on the party, it shall be legally effective.

**第五百四十七条** 与中华人民共和国没有司法协助条约又无互惠关系的国家的法院，未通过外交途径，直接请求人民法院提供司法协助的，人民法院应予退回，并说明理由。

**Article 547** Where a court of a country which does not conclude a judicial assistance treaty or have reciprocal relations with the People's Republic of China directly requests judicial assistance from the people's court without pursuing diplomatic channels, the people's court shall reject such request, with the reasons stated.

**第五百四十八条** 当事人在中华人民共和国领域外使用中华人民共和国法院的判决书、裁定书，要求中华人民共和国法院证明其法律效力的，或者外国法院要求中华人民共和国法院证明判决书、裁定的法律效力的，作出判决、裁定的中华人民共和国法院，可以本法院的名义出具证明。

**Article 548** Where a party uses a judgment or ruling of a court of the People's Republic of China outside the territory of the People's Republic of China and requests the court of the People's Republic of China to prove the legal effect of the judgment or ruling, or a foreign court requests the court of the People's Republic of China to prove the legal effect of the judgment or ruling, the court of the People's Republic of China which renders the judgment or ruling may issue a certificate to prove the legal effect of the judgment or ruling in its own name.

**第五百四十九条** 人民法院审理涉及香港、澳门特别行政区和台

**Article 549** The special provisions on the foreign-related civil procedures apply mutatis mutandis to the trial of civil litigation cases involving the Hong Kong and Macau Special Administrative Regions and Taiwan region by the people's

湾地区的民事诉讼案件，可以参照 **courts.**

适用涉外民事诉讼程序的特别规

定。

### 二十三、附则

### Chapter XXIII Supplementary Provisions

**第五百五十条** 本解释公布施行后，最高人民法院于 1992 年 7 月 14 日发布的《关于适用〈中华人民共和国民事诉讼法〉若干问题的意见》同时废止；最高人民法院以前发布的司法解释与本解释不一致的，不再适用。

**Article 550** After this Interpretation is promulgated and comes into force, the Opinions on Issues concerning the Application of the Civil Procedure Law of the People's Republic of China promulgated by the Supreme People's Court on July 14, 1992 shall be simultaneously repealed; and any judicial interpretation previously promulgated by the Supreme People's Court which is inconsistent with this Interpretation shall cease to be applicable.



扫一扫，手机阅读更方便

# **Exhibit B-6**

ENGLISH TRANSLATION

Civil Order re Appellate Review and Trial Supervision in Dispute over a Financial Loan Agreement Between Sichuan Shuniu Real Estate Development Co., Ltd. and Chengdu Branch of Ping An Bank Co., Ltd.

**Civil Order re Appellate Review and Trial Supervision in Dispute over a Financial Loan Agreement Between Sichuan Shuniu Real Estate Development Co., Ltd. and Chengdu Branch of Ping An Bank Co., Ltd.**

Court: Supreme People's Court

Case No.: (2017) Zui Gao Fa Min Shen No. 1400

Date: June 23, 2017

Cause of Action: Civil / Contractual and Quasi-Contractual Disputes / Contractual Disputes / Disputes over Loan Contracts

[Translation Omitted]

**On the Question of Whether the Appellate Court Committed A Serious Procedural Violation**

Shuniu appealed claiming that the appellate court committed a serious procedural violation on the ground that it did not conduct investigations or collect evidence upon Shuniu's application, and failed to arrange for cross-examination with regard to some evidence submitted by Ping An Bank.

[Translation Omitted]

On November 11, 2016, in accordance with Paragraph 2, Article 64 of the *Civil Procedure Law*, Shuniu applied for the appellate court to order that Ping An Bank produce data related to authorizing credit and loans, and applied for the appellate court to obtain, from Chengdu's Longquanyi District Tax Bureau, Tianyin's tax returns between 2010 and 2013.

Article 64 of the *Civil Procedure Law* prescribes how a people's court may obtain evidence, while Paragraph 1, Article 94 of the *Interpretation by the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China* further clarifies the scope of "evidence that a party and its litigation representative are unable to collect for some objective reasons," which does not include evidence in the possession of the opposing party. Shuniu's application for the appellate court to order that Ping An Bank produce data does not fall within this scope where a people's court may investigate and collect evidence upon a party's application, but may instead be resolved by redistribution of burdens of adducing evidence or obstruction of evidence. As a result, the appellate court did not err.

[Translation Omitted]

## 四川省蜀牛房地产开发有限责任公司、平安银行股份有限公司成都分行金融借款合同纠纷再审审查与审判监督民事裁定书

审 理 法 院:最高人民法院

案 号:(2017)最高法民申 1400 号

裁 判 日 期:2017.06.23

案 由:民事/合同、准合同纠纷/合同纠纷/借款合同纠纷

再审申请人(一审被告、二审上诉人):四川省蜀牛房地产开发有限责任公司。住所地:四川省成都市金牛区五块石蓉北商贸大道一段 17 号。

法定代表人:陈宏强,该公司执行董事。

委托诉讼代理人:文代君,北京万商天勤(成都)律师事务所律师。

委托诉讼代理人:王皓民,北京万商天勤(成都)律师事务所律师。

被申请人(一审原告、二审被上诉人):平安银行股份有限公司成都分行。住所地:四川省成都市高新区天府二街 99 号 1 栋 1 楼 101、103、105 号,2 楼 201、202 号。

法定代表人:徐良,该行行长。

委托诉讼代理人:李毅,该行员工。

委托诉讼代理人:何淼,该行员工。

被申请人(一审被告、二审被上诉人):成都天银制药有限公司。住所地:四川省成都市龙泉驿区经济技术开发区内。

法定代表人:江国庆,该公司董事长。

再审申请人四川蜀牛房地产开发有限责任公司(以下简称蜀牛公司)因与被申请人平安银行股份有限公司成都分行(以下简称平安银行)、成都天银制药有限公司(以下简称天银公司)借款合同纠纷一案,不服四川省高级人民法院(2016)川民终 831 号民事判决,向本院申请再审。本院依法组成合议庭对本案进行了审查,现已审查终结。

蜀牛公司申请再审称:一、二审法院程序严重违法。二审法院违反了《中华人民共和国民事诉讼法》(以下简称《民事诉讼法》)第二百条第一款第四项、第五项、第九项之规定,侵犯了蜀牛公司的质证权、调查取证(申请)权及辩论权。二审审理中,蜀牛公司申请二审法院分别向成都市经济犯罪侦查处和成都市龙泉驿区地税局、国税局调取证据并于 2016 年 10 月 18 日向二审法院递交了《调取证据申请书》。该院在开庭时只是口头责令平安银行庭后一周内向法庭提交相应审贷资料,对向税务机关调取一事,却未明确提及,蜀牛公司误以为二审法院会自行依法调取。平安银行仅提交了一份严重残缺的审贷资料,且该审贷资料并非蜀牛公司要求的 2013 年 7 月授信 8500 万元及贷款 7200 万元的相应资料,而是 2014 年的贷款的资料。其中,平安银行方面的会审意见、核查评估等关键资料被有意抽取,税务机关的资料未见踪影。即使平安银行提交了资料,二审法院也没有组织双方进行质证,剥夺了蜀牛公司的辩论权等



诉讼权利。为查证事实，蜀牛公司于2016年11月11日，再次向二审法院递交了《调取证据申请书

（2）》，就前述证据要求调查取证。蜀牛公司特别在申请书中阐明了已经发现“共同欺诈”的情况，并要求拟对调查取证后的证据当庭质证。在蜀牛公司等待再次调取的证据、再次开庭的过程中，一纸终审判决书却突然从天而降。蜀牛公司认为，平安银行本应当就蜀牛公司的调查取证申请全部提交涉案证据，方才符合程序规定，尤其是在第一次申请未能奏效且银行方面故意抽取关键资料的情况下，二审法院更应当对存放于国家机关的涉案证据及时予以调取。但二审法院却违反程序法，致使本案关键证据未被发现和质证，最终草草判决。二、二审法院适用法律错误。二审法院违反了《民事诉讼法》第二百条第一款第六项之规定，适用法律错误，本案应当再审。依据中国人民银行《人民币利率管理规定》、《关于人民币贷款利率有关问题的通知》的相关规定，复利的计算基数应仅为正常利息即合同期内的应付利息，不包括逾期罚息。因此，即使蜀牛公司完全败诉，二审法院也不能将复利的计算基数包括逾期罚息。三、质押权已经失效。平安银行作为质押权人因未申请展期，根据双方合同约定质押权已经失效。应收账款质押登记为设权性登记，以登记为设立标准，既然登记失效，质押权不再有效。四、有新证据足以推翻原审终审判决。依据《民事诉讼法》第二百条第一款第一项之规定，在原审判决生效后，蜀牛公司委托律师调取并提交了新证据，足以证明平安银行与天银公司通过恶意串通或者利用合法形式损害蜀牛公司的利益。依据《中华人民共和国合同法》第五十二条第一款第二项、第三项之规定，三方签署的所有相关合同应当归于无效，或者至少是，双方签署的担保合同归于无效。综上，蜀牛公司依据《民事诉讼法》第二百条第一项、第四项、第五项、第六项、第九项之规定申请再审。

平安银行答辩称：一、一、二审判决认定事实清楚，适用法律正确，请求驳回蜀牛公司的再审申请。二、二审判决对蜀牛公司申请调取的证据的关联性已作阐述，蜀牛公司的调查取证申请因证据与本案争议不具关联性而未予准许。三、对蜀牛公司提交的“新的证据”合法性、真实性和关联性均不认可。涉案的贷款在2013年7月已经放贷，而蜀牛公司提交的证据系在此之后。为此，请求驳回蜀牛公司的再审申请。

本院再审审查查明：平安银行与蜀牛公司于2013年7月18日签订的《应收账款质押登记协议》（合同编号：平银蓉棕账质字20130718第001号）约定：双方已于2013年7月18日签订平银蓉棕额质字20130718第001号《最高额质押担保合同》；其他未尽事宜，遵照中国人民银行《应收账款质押登记办法》、中国人民银行征信中心《应收账款质押登记操作规则》的有关规定办理。

本案再审审查中，蜀牛公司向本院提交《责令提交书证申请书》，并依据《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》（以下简称《民诉法解释》）第一百一十二条的规定，申请本院责令平安银行提交其制作和保存的关于2013年7月的8500万元授信及7200万元贷款的全套申贷资料。

本院认为，本案再审审查主要涉及以下问题：一、蜀牛公司和平安银行提交的“新证据”的法律效力；二、二审法院是否存在程序严重违法；三、二审法院是否存在适用法律错误；四、蜀牛公司应否在本案中承担担保责任及应收账款质押担保责任的范围；五、蜀牛公司向本院申请文书提出命令应否准许。

一、关于蜀牛公司和平安银行提交的“新证据”的法律效力问题

蜀牛公司申请再审提交了以下“新证据”：1. 2017年1月4日龙泉驿国税局出具的《涉税信息查询结果告知书》及所附增值税纳税申报表；2. 2016年10月27日龙泉驿国税局出具的《涉税信息查询结果告知

书》及所附增值税纳税申报表；3. 平安银行授信档案卷内目录资料（原件存放于成都市经济犯罪侦查处）；4. 四川檀诚会计师事务所加盖有否认资料真实性印章的川檀会审字第（2013）第 2-21 号审计报告。以上证据证明平安银行明知贷款资料虚假，串通借款人欺骗蜀牛公司或者利用合法形式掩盖非法目的的情况成立；5. 中国人民银行征信中心《动产权属统一登记——初始登记》（登记证明标号：00952252000117839100，登记时间：2013-07-31），质押财产描述：蜀牛公司将其所有的房产（权证号：成房权证监证字第××号、成房权证监证字第××号、成房权证监证字第××号）所产生的租金收入自 2013 年 7 月 31 日起质押给平安银行，证明即使质押合同有效，质押权亦失效。

针对上述证据，本院认为，1. 蜀牛公司举示以上证据系为证明平安银行与天银公司之间恶意串通的事实。上述证据中证据 1 至证据 4，主要反映的是天银公司的行为，既不能证明平安银行对所谓的天银公司贷款资料虚假事实的明知，更不能证明平安银行和天银公司之间有恶意串通的行为，不能达到蜀牛公司的证明目的。2. 蜀牛公司举示的证据 4，蜀牛公司系欲以该证据上四川檀诚会计师事务所的批注“P315-P335 不是我公司出的资料。2017 年 1 月 3 日”来否认该报告的真实性，故该证据在证据种类上属于单位证言。

《民诉法解释》第一百一十五条规定：“单位向人民法院提出的证明材料，应当由单位负责人及制作证明材料的人员签名或者盖章，并加盖单位印章。”证据 4 虽然加盖有单位印章，但没有单位负责人或者报告上落款的注册会计师签名，不符合单位证言的形式要求。3. 蜀牛公司举示的证据 5，平安银行在一审中已向法院提交，一、二审法院也予以采信，不属于再审新证据的范畴。

综上，蜀牛公司申请再审提交的上述证据不符合《民诉法解释》第三百八十七条第一款规定的情形，不足以推翻原判决已认定的基本事实，不具有再审“新的证据”的法律效力。

平安银行在本案再审审查期间向本院提交中国人民银行征信中心《动产权属统一登记——初始登记》（登记证明标号：01521932000186440148，登记时间：2014-07-28）、《动产权属统一登记——展期登记》（登记证明标号：01521932000424178061，登记时间：2017-05-02），质押财产描述：蜀牛公司位于金牛区蓉北商贸大道一段 17 号五块石商贸中心商铺（面积：5202.65 平方米，房产权证号：成房权证监证字第××号）全部租金自 2014 年 7 月 25 日起质押给平安银行，登记到期日 2022 年 7 月 27 日。本院认为平安银行举示的证据登记证明标号、登记时间以及质押财产情况与一审判决查明的质押事实不符，本院对证据的关联性不予确认，对该证据不予采信。

## 二、关于二审法院是否存在程序严重违法的问题

蜀牛公司申请再审认为二审法院存在程序严重违法，理由是二审法院未根据蜀牛公司的申请进行调查取证，对平安银行提供的部分证据没有组织双方进行质证。

### （一）关于调查取证的问题

1. 蜀牛公司于 2016 年 10 月 18 日申请二审法院调取以下证据：（1）向成都市公安局经侦支队调取天银公司提供给平安银行办理贷款及授信并经会计事务所审计的 2011 年至 2013 年《资产负债表》、《损益表》、《现金流量表》、《纳税申报表》即交税发票或交税支付凭证；关于 2013 年天银公司 7200 万元贷款的全套银行贷款申请资料的复印件及 2014 年 7 月平安银行向天银公司授信 1.2 亿元授信资料复印件。

（2）向成都市龙泉驿区国家税务局及地方税务局调取天银公司 2011 年至 2013 年的纳税情况。

首先，蜀牛公司申请二审法院向成都市公安局经侦支队调取的证据并不能证明平安银行对所谓的天银公司贷款资料虚假事实的明知，也不能证明平安银行和天银公司之间有恶意串通的行为，不能达到蜀牛公司的证明目的，对待证事实无意义，二审法院有权不予准许。其次，根据《民诉法解释》第九十四条第二款的规定，当事人及其诉讼代理人可以向人民法院申请调查收集的证据应当是其因客观原因不能自行收集的证据。蜀牛公司申请二审法院向税务机关调取的部分证据，其已经在申请再审时作为新证据提交，事实证明并非其不能自行收集的证据，不属于人民法院调查取证的范围。最后，二审法院已经在二审判决中对不予调取天银公司向平安银行借款时所提供的所有资料及天银公司的纳税资料的原因作出了阐释，不存在程序严重违法的情况。

2. 蜀牛公司于2016年11月11日以《民事诉讼法》第六十四条第二款为法律依据，申请二审法院责令平安银行提供有关授信、贷款的资料，并申请二审法院向成都龙泉驿区国家税务局调取天银公司2010年至2013年《纳税申报表》。

《民事诉讼法》第六十四条系关于人民法院调取证据的规定，以及《民诉法解释》第九十四条第一款对“当事人及其诉讼代理人因客观原因不能自行收集的证据”范围作出了进一步的规定，其范围并不包括对方当事人持有的证据。蜀牛公司申请二审法院责令平安银行提供资料，并不属于人民法院依据当事人申请调查取证的范围，而是可以通过举证责任分配或者“证明妨害”处理。故二审法院的处理并无不当。

（二）关于蜀牛公司申请再审提出二审法院对平安银行提供的部分证据没有组织双方进行质证的问题

首先，蜀牛公司申请二审法院责令平安银行提交相关审贷资料，目的是为证明平安银行与天银公司之间存在恶意串通的事实。但是，即便确有天银公司虚报或者伪造财务状况的事实，也最多只能证明平安银行在贷款、授信的审查中存在重大过失，无法证明平安银行存在恶意或者和天银公司串通的事实，即不论平安银行是否提交了蜀牛公司要求的完整的资料，都不能实现蜀牛公司的证明目的。其次，从二审判决情况来看，二审法院不论在事实认定还是案件处理结果上，对平安银行提交的这部分证据并没有采信，即没有将这部分证据作为认定案件的依据，故不属于《民事诉讼法》第二百条第三项和第九项规定的“原判决、裁定认定事实的主要证据未经质证”和“违反法律规定，剥夺当事人辩论权利”的情形。

三、关于二审法院是否存在适用法律错误的问题

蜀牛公司申请再审认为二审判决适用法律错误，理由是认为复利的计算基数应仅为正常利息即合同期内的应付利息，不包括逾期利息。根据平安银行与天银公司于2013年7月29日签订的《贷款合同》（平银蓉棕贷字20130718第001号）约定的复利计算方式为“天银公司未能按约定偿还贷款的，平安银行有权根据实际逾期天数从逾期之日起对贷款本金按照本合同约定的利率加50%计收罚息，对不能支付的利息，按罚息利率计收复利。”平安银行据此约定诉请本金和利息、罚息、复利，一、二审法院对平安银行的诉请予以支持。从上述合同约定来看，复利的计算基数为“不能支付的利息”，并没有包括逾期罚息，一、二审法院依据合同约定判决的复利计算方式不存在适用法律错误的情形。

四、关于蜀牛公司应否在本案中承担担保责任以及应收账款质押担保责任的范围问题

蜀牛公司申请再审主张其不承担担保责任，理由是认为平安银行与天银公司恶意串通或者利用合法形式掩盖非法目的，导致担保合同无效。《中华人民共和国合同法》第五十二条规定：“有下列情形之一的，合同无效：……（二）恶意串通，损害国家、集体或者第三人利益；（三）以合法形式掩盖非法目



的；……”《民诉法解释》第一百零九条规定：“当事人对欺诈、胁迫、恶意串通事实的证明，以及对口头遗嘱或者赠与事实的证明，人民法院确信该待证事实存在的可能性能够排除合理怀疑的，应当认定该事实存在。”该规定系对欺诈、胁迫和恶意串通事实提高证明标准的规定，即对这类事实的证明标准应达到排除合理怀疑的程度。本案中，现有的证据仅能反映天银公司的行为，即便确有天银公司虚报或者伪造财务状况的事实，也最多只能证明平安银行在贷款、授信的审查中存在重大过失，无法证明平安银行存在恶意或者和天银公司串通的事实。故本案证据尚不能达到《民诉法解释》第一百零九条规定的证明标准。同时，既然本案现有证据不能证明平安银行存在“恶意串通”，也不能证明平安银行存在“故意”，蜀牛公司主张的“以合法形式掩盖非法目的”自然缺乏证据。因此，蜀牛公司主张担保合同无效的理由不成立，其据此主张不应承担担保责任，缺乏事实和法律依据。

《中华人民共和国物权法》第二百二十八条规定：“以应收账款出质的，当事人应当订立书面合同。质权自信贷征信机构办理出质登记时设立。”中国人民银行《应收账款质押登记办法》第十二条：“质权人自行确定登记期限，登记期限以年计算，最长不得超过5年。登记期限届满，质押登记失效。”平安银行与蜀牛公司于2013年7月18日签订的《应收账款质押登记协议》中明确约定，未尽事宜遵照中国人民银行《应收账款质押登记办法》、中国人民银行征信中心《应收账款质押登记操作规则》的有关规定办理。即根据双方约定，在合同无其他相反约定的情况下，中国人民银行《应收账款质押登记办法》、中国人民银行征信中心《应收账款质押登记操作规则》的有关规定适用于本案所涉的应收账款质押。根据中国人民银行征信中心《动产权属统一登记——初始登记》（登记证明编号：00952252000117839100）记载，蜀牛公司提供的应收账款质押已经于2015年7月30日登记到期，而平安银行并未提供证据证明其在登记期限届满前申请展期，故平安银行对蜀牛公司提供的应收账款的质押权因登记期限届满后失效，即平安银行对蜀牛公司质押登记房产自2015年7月31日后所产生的租金不再享有优先受偿权，但平安银行仍然有权主张质押登记期间（2013年7月31日至2015年7月30日）的应收账款优先受偿权。因此，一、二审判决“如天银公司未履行上述给付义务，平安银行有权就蜀牛公司在中国人民银行征信中心《动产权属统一登记——初始登记》（登记证明编号：00952252000117839100）中记载的质押应收账款优先受偿，蜀牛公司在承担质押担保责任后，有权向天银公司追偿。”该判项虽然未明确应收账款质权有效期间，但是根据中国人民银行征信中心记载及《应收账款质押登记办法》，对超出登记期间的应收账款，蜀牛公司显然不承担应收账款质押担保责任。故本案一、二审判决应收账款质押权按照中国人民银行征信中心的登记（包括应收账款范围及期间）来行使，并无不当。如果平安银行对于登记期间届满后应收账款主张优先受偿权，蜀牛公司可在执行程序中提出抗辩。本院对蜀牛公司以一、二审判决其承担应收账款质押权担保错误为由请求再审，不予支持。

#### 五、关于蜀牛公司向本院提出的文书提出命令

蜀牛公司在再审审查阶段以《民诉法解释》第一百一十二条为依据，申请本院责令平安银行提交其制作和保存的关于2013年7月的8500万元授信及7200万元贷款的全套申贷资料。首先，《民诉法解释》第一百一十二条是关于书证中的证明妨害规则的规定，适用于诉讼中的妨害行为。而本案尚处再审审查阶段，蜀牛公司无权在本案中提出程序性的申请。其次，文书提出命令的适用条件首先要求待证事实对于判决结果具有重要影响，而该书证对于待证事实的证明有重要意义。本案中，蜀牛公司申请责令平安银行提

交相关书证的目的，是要证明平安银行在审贷过程中与天银公司恶意串通，但是，蜀牛公司申请的书证并不能达到其目的，即书证对于待证事实的证明不具有重要意义。因此，蜀牛公司的该申请不符合上述规定，本院不予准许。

综上，蜀牛公司的再审申请不符合《中华人民共和国民事诉讼法》第二百第一项、第四项、第五项、第六项、第九项规定的情形。本院依照《中华人民共和国民事诉讼法》第二百零四条第一款，《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》第三百九十五条第二款规定，裁定如下：

驳回四川省蜀牛房地产开发有限责任公司的再审申请。

审 判 长： 李玉林

审 判 员： 张纯

审 判 员： 李晓云

二〇一七年六月二十三日

法官助理： 万怡

书 记 员： 方晓玲



扫一扫，手机阅读更方便

# **Exhibit B-7**

ENGLISH TRANSLATION

Appellate Civil Opinion re Dispute over Infringement of Invention Patent Rights between Inner Mongolia Wanqi Mechanical Processing Co., Ltd. and Wenjiata Coal Mine, Ordos Wulan Coal Group Co., Ltd.

**Appellate Civil Opinion re Dispute over Infringement of Invention Patent Rights  
Between Inner Mongolia Wanqi Mechanical Processing Co., Ltd. and Wenjiata Coal  
Mine, Ordos Wulan Coal Group Co., Ltd.**

Court: Supreme People's Court

Case No.: (2021) Zui Gao Fa Zhi Min Zhong No. 420

Date: September 7, 2021

Cause of Action: Civil / Disputes over Intellectual Property and Competition / Disputes over  
Ownership and Infringement of Intellectual Property / Disputes over Ownership and  
Infringement of Patent Rights / Disputes over Infringement of Invention Patent Rights

[Translation Omitted]

**Opinion**

This Court holds: This case involves infringement of patent rights for inventions. According to Wanqi's request and grounds for this appeal, our focus question is, whether the lower court's denial of Wanqi's request to collect evidence constituted a procedural violation.

[Translation Omitted]

...in certain circumstances where a party for objective reasons is unable to collect some evidence on its own, the people's court may investigate and collect so upon the said party's application.

[Translation Omitted]

[It should be noted that] those circumstances in which a party for objective reasons is unable to collect some evidence and applies for the people's court for investigating and collecting so, mostly include the two stipulated by Sections (1) and (2) under Article 94 of *Interpretation by the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China* [hereafter the "**Interpretation**"]. Section (3) thereof is a catch-all provision, the reading of which must be limited to those materials which in actuality cannot be collected [by a party] on its own for objective reasons. That evidence is under the control of the opposing party is not one of those circumstances in which an application to a people's



## ENGLISH TRANSLATION

Appellate Civil Opinion re Dispute over Infringement of Invention Patent Rights between Inner Mongolia Wanqi Mechanical Processing Co., Ltd. and Wenjiata Coal Mine, Ordos Wulan Coal Group Co., Ltd.

court for investigation and collection is warranted. To resolve difficulties faced by a party in such circumstances, Article 112 of the *Interpretation* prescribes a mechanism for submitting documentary evidence, i.e., “[w]here the documentary evidence is under the control of the opposing party, the party who bears the burden of proof may submit a written application requesting the people’s court to order the opposing party to submit it before the expiry of the time limit for adducing evidence. Where the grounds for the application are tenable, a people’s court shall order the opposing party to submit. The expenses arising from the submission of documentary evidence shall be assumed by the applicant. Where the opposing party refuses to submit without any justified reason, a people’s court may determine that the contents of the documentary evidence adduced by the applicant are true.” Moreover, the law also prescribes the mechanisms for adverse inferences in cases of obstructing adducing evidence, and for preserving evidence, in order to solve the problem of an obligee having difficulties in defending his rights. These mechanisms, however, do not mean that a court may order the opposing party to submit evidence, take other compulsory measures, or make adverse inferences, whenever some evidence is under the control of the opposing party. Instead, the court must conduct review according to the principles of legality and of necessity. In this case, Wanqi claims that Wenjiata has infringed the patent rights at issue, and shall bear the civil liabilities of ceasing and desisting, and compensating for damages.

[Translation Omitted]

Therefore, preliminary evidence submitted by Wanqi to the lower court preliminarily cannot prove the objective existence of infringement as it alleged. With regard to the second point of review, Wanqi’s application for the people’s court to investigate and collect evidence was based solely on the ground that the infringed products were under the control of the opposing party, a circumstance that does not fall under Section (3), Paragraph 1, Article 94 of the *Interpretation*. For those reasons above, Wanqi’s application for the lower court to investigate and collect evidence, such as the technical characteristics of the infringed products, was inconsistent with Paragraph 1, Article 94 of the *Interpretation*, denial of which by the lower court was not erroneous. The appeal ground raised by Wanqi is untenable and is hereby rejected by this Court.

[Translation Omitted]

# 内蒙古万琪机械加工股份有限公司、鄂尔多斯市乌兰煤炭（集团）有限责任公司温家塔煤矿侵害发明专利权纠纷民事二审民事判决书

审 理 法 院:最高人民法院

案 号:(2021)最高法知民终 420 号

裁 判 日 期:2021.09.07

案 由:民事/知识产权与竞争纠纷/知识产权权属、侵权纠纷/专利权权属、侵权纠纷/侵害发明专利权纠纷

## 当事人

上诉人（原审原告）：内蒙古万琪机械加工股份有限公司。住所地：内蒙古自治区鄂尔多斯市伊金霍洛旗乌兰木伦镇布连海村。

法定代表人：赵云飞，该公司执行董事兼经理。

委托诉讼代理人：蒙永志，北京市盈科（呼和浩特）律师事务所律师。

委托诉讼代理人：段超，北京市盈科（呼和浩特）律师事务所律师。

被上诉人（原审被告）：鄂尔多斯市乌兰煤炭（集团）有限责任公司温家塔煤矿。经营场所：内蒙古自治区鄂尔多斯市伊金霍洛旗乌兰木伦镇。

负责人：王奇，该煤矿矿长。

## 审理经过

上诉人内蒙古万琪机械加工股份有限公司（以下简称万琪公司）因与被上诉人鄂尔多斯市乌兰煤炭（集团）有限责任公司温家塔煤矿（以下简称温家塔煤矿）侵害发明专利权纠纷一案，不服内蒙古自治区包头市中级人民法院于2020年12月14日作出的（2020）内02民初222号民事判决，向本院提起上诉。本院于2021年3月10日立案后，依法组成合议庭对本案进行了审理。本案现已审理终结。

## 二审诉讼请求

万琪公司上诉请求：1. 撤销原审判决，改判支持万琪公司的全部诉讼请求，或将案件发回重审；2. 判令温家塔煤矿承担本案一审、二审诉讼费。事实与理由：（一）温家塔煤矿使用的采煤巷道电缆支架车（以下称被诉侵权产品）位于煤矿井下，未经许可难以进入煤矿并获得该证据。万琪公司在一审程序中提交了手机拍摄的被诉侵权产品照片，并申请原审法院到温家塔煤矿进一步调取证据，以查明侵权事实。原审法院未予准许，不符合《最高人民法院关于民事诉讼证据的若干规定》（以下简称民事诉讼证据规定）第二条第二款以及《中华人民共和国民事诉讼法》（以下简称民事诉讼法）第六十四条第二款的规定。（二）原审法院在收到万琪公司的调取证据申请后，未向万琪公司送达不予准许通知书，而是在判决书中告知不予准许的理由，剥夺了万琪公司的复议权，属于程序违法。

温家塔煤矿未作答辩。

## 一审诉讼请求

内蒙古万琪机械加工股份有限公司、鄂尔多斯市乌兰煤炭（集团）有限责任公司温家塔煤矿侵害发明专利权纠纷民事二审民事判决书

万琪公司向原审法院提起诉讼，原审法院于2020年8月3日立案受理，万琪公司起诉请求：1.判令温家塔煤矿停止使用并销毁被诉侵权产品；2.判令温家塔煤矿赔偿万琪公司经济损失75万元；3.判令温家塔煤矿承担本案的诉讼费用。

### 一审辩方观点

温家塔煤矿原审辩称：万琪公司的主体不适格，且主张的侵权事实不能成立。万琪公司提交的图片未经公证，图片形成时间、地点均无法确认，亦不能体现被诉侵权产品的全部技术特征，无法进行技术比对。万琪公司未尽到合理的举证义务，应承担举证不能的法律后果。

### 一审法院查明

原审法院认定事实：本案涉及专利号为ZL201210382197.0、名称为“采煤巷道电缆支架车”的发明专利（以下简称涉案专利）。2012年9月24日，案外人赵云飞、李玉存向国家知识产权局提出涉案专利申请，于2015年2月25日获得授权，专利权人为赵云飞和李玉存。2017年9月20日，专利权人由赵云飞、李玉存变更为赵云飞。2018年12月2日，赵云飞与万琪公司签订《专利许可使用协议》，约定赵云飞许可万琪公司使用涉案专利，许可方式为普通实施许可，使用期限为2018年12月1日至2038年12月1日。2020年5月13日，专利权人由赵云飞变更为万琪公司。

2018年5月4日，原国家知识产权局专利复审委员会作出无效宣告请求审查决定，宣告涉案专利权部分无效，在权利要求1-8的基础上维持专利权继续有效。万琪公司在本案中主张保护涉案专利权利要求1。权利要求1的内容为：“一种采煤巷道电缆支架车，其包括至少两辆以上的电缆车；所述电缆车安放在巷道地面上的工字钢轨道上；其特征在于，其还包括折叠槽形电缆桥架，两根立柱或四根立柱，电缆托盘、电缆压板；在每辆所述电缆车上设有所述等长的所述两根立柱或等长的所述四根立柱，在所述立柱顶端固定设有槽形电缆托盘，在所述电缆托盘顶部固定设有所述电缆压板；相邻的两个电缆车之间设有所述折叠槽形电缆桥架，所述折叠槽形电缆桥架的两端分别与相邻的所述电缆托盘活动铰接，从而形成一个整体连通的电缆桥架。”

万琪公司在一审立案时提交其自行拍摄的两张照片，拟证明温家塔煤矿实施了侵权行为。万琪公司称，照片系于2019年7月在温家塔煤矿井下拍摄。照片上没有显示拍摄地点、拍摄时间，温家塔煤矿对其真实性、合法性、关联性均不予认可。原审庭审中，万琪公司提供其自行拍摄的照片24张，关于设备的照片仍未显示拍摄地点、时间。万琪公司于2020年8月4日申请原审法院调查取证，温家塔煤矿则认为不属于法院调查取证的范畴。

### 一审法院认为与裁判

原审法院认为，涉案专利权在有效期限内，法律状态稳定，应受法律保护。万琪公司于本案起诉时已经取得涉案专利权，有权对侵害涉案专利权的行为提起诉讼。

本案中，万琪公司主张温家塔煤矿侵犯了涉案专利权，但仅提交了照片作为依据。照片系万琪公司自行拍摄，其中关于被诉侵权产品的照片未显示拍摄地点、时间，且照片内容并不清楚，仅从照片难以确定被诉侵权产品的具体技术特征，例如从照片上显示每根电缆上都有绑带状材料，但其与桥架以及托架是否连接、如何连接、所起作用，照片均不能反映。万琪公司申请法院调查取证，但其未提交关联性方面的可靠的初步证据，根据案件审理情况以及专利权人主张权利的情况，万琪公司的申请并不属于民事诉讼法规

内蒙古万琪机械加工股份有限公司、鄂尔多斯市乌兰煤炭（集团）有限责任公司温家塔煤矿侵害发明专利权纠纷民事二审民事判决书

定的人民法院调查取证的范围。万琪公司对其主张有责任提交证据，其提交的证据不足以证实温家塔煤矿实施了侵害涉案专利权的行为，故对于其诉讼请求原审法院不予支持。

原审法院判决：驳回万琪公司的诉讼请求。案件受理费 11300 元，由万琪公司负担。

本案二审中，万琪公司、温家塔煤矿均未提交新证据。

## 本院查明

本院经审理查明，原审法院查明的事实基本属实，本院予以确认。

## 本院认为

本院认为：本案为侵害发明专利权纠纷，根据万琪公司的上诉请求和理由，本案二审焦点问题是，原审法院对万琪公司调取证据的申请不予准许是否构成程序违法。

民事诉讼法第六十四条第一款、第二款规定：“当事人对自己提出的主张，有责任提供证据。当事人及其诉讼代理人因客观原因不能自行收集的证据，或者人民法院认为审理案件需要的证据，人民法院应当调查收集。”《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》（以下简称民事诉讼法解释）第九十四条规定：“民事诉讼法第六十四条第二款规定的当事人及其诉讼代理人因客观原因不能自行收集的证据包括：（一）证据由国家有关部门保存，当事人及其诉讼代理人无权查阅调取的；（二）涉及国家秘密、商业秘密或者个人隐私的；（三）当事人及其诉讼代理人因客观原因不能自行收集的其他证据。当事人及其诉讼代理人因客观原因不能自行收集的证据，可以在举证期限届满前书面申请人民法院调查收集。”为保障司法的公平、公正，人民法院在民事诉讼活动中应恪守居中裁判之地位，不能随意调查收集证据，否则，受该证据影响处于不利地位的当事人就会质疑裁判的公正性。因此，“谁主张，谁举证”是民事诉讼活动所应当遵循的基本举证原则。不过，根据民事诉讼法以及民事诉讼法解释的上述规定，在特定情形下，当事人因客观原因不能自行收集的证据，人民法院可以依当事人申请调查收集。此时应当注意把握如下要点：1. 人民法院对当事人调查取证申请的审查，应当遵循法定原则和必要性原则，以免损害司法的公平、公正。2. 人民法院根据当事人申请对证据进行必要的调查收集，仅是弥补当事人调查能力不足的重要手段，而非替代当事人承担举证责任。3. 人民法院依当事人申请调查收集的证据，其性质并未发生变化，仍然是作为提出申请的一方当事人提供的证据，应由提出申请的当事人与对方当事人、第三人进行质证。4. 当事人因客观原因不能自行收集而申请人民法院调查收集证据的情形，主要包括民事诉

讼法解释第九十四条规定的第一项、第二项两种情形，第三项规定是兜底条款，对该兜底情形的掌握，必须仅限于确因客观原因不能自行收集的其他材料。证据在对方当事人控制之下，不属于可以申请人民法院调查收集证据的情形。为解决这一情形下当事人调查取证困难的问题，民事诉讼法解释第一百一十二条规定了“书证提出命令”制度，即“书证在对方当事人控制之下的，承担举证证明责任的当事人可以在举证期限届满前书面申请人民法院责令对方当事人提交。申请理由成立的，人民法院应当责令对方当事人提交，因提交书证所产生的费用，由申请人负担。对方当事人无正当理由拒不提交的，人民法院可以认定申请人所主张的书证内容为真实。”此外，法律还规定了举证妨碍推定制度、证据保全制度等以解决权利人的“维权难”问题，但上述制度并不意味着，只要证据在对方当事人的控制之下，法院就可责令对方当事人提交或采取其他强制性措施、作出不利推定等，而是应依据法定原则和必要性原则进行审查。本案中，万琪公司主张，温家塔煤矿侵害涉案专利权，应承担停止侵权、赔偿损失等民事责任。根据民事诉讼法第



内蒙古万琪机械加工股份有限公司、鄂尔多斯市乌兰煤炭（集团）有限责任公司温家塔煤矿侵害发明专利权纠纷民事二审民事判决书

六十四条第一款的规定，万琪公司应当提供证据证明温家塔煤矿存在侵害涉案专利权的行为。现万琪公司申请原审法院调查收集的被诉侵权产品的技术特征等证据，既不属于由国家有关部门保存的证据，也不涉及国家秘密、商业秘密或者个人隐私。关于万琪公司申请原审法院调查收集的证据是否属于民事诉讼法解释第九十四条第一款第三项规定的情形“当事人及其诉讼代理人因客观原因不能自行收集的其他证据”，可以从以下两个方面进行审查：其一，申请人是否提供了初步证据证明侵权事实的客观存在；其二，申请调查收集的证据是否确因客观原因不能自行收集。就第一个审查因素而言，万琪公司提交了一组照片，包括两张温家塔煤矿的门脸照片和数张无标识的设备局部照片。从这些初步证据来看，一是整组照片的拍摄时间无法确认；二是设备照片的拍摄地点无法确认；三是设备照片不清晰，设备的大部分技术特征无法辨认；四是照片中的设备无任何指向温家塔煤矿的标识信息。因此，万琪公司向原审法院提交的初步证据，

并不能初步证明其所指控的被诉侵权事实客观存在。就第二个审查因素而言，万琪公司仅以被诉侵权产品在对方当事人控制之下为由申请人民法院调查收集证据，该情形不属于民事诉讼法解释第九十四条第一款第三项规定的情形。综上，万琪公司申请原审法院调查收集被诉侵权产品的技术特征等证据，不符合民事诉讼法解释第九十四条第一款的规定，原审法院对该申请不予准许并无不当。万琪公司该项上诉理由不能成立，本院不予支持。

万琪公司上诉还主张，原审法院对万琪公司的调取证据申请未制作通知书并送达，不符合民事诉讼证据规定关于“人民法院对当事人及其诉讼代理人的申请不予准许的，应当向当事人或其诉讼代理人送达通知书。当事人及其诉讼代理人可以在收到通知书的次日起三日内向受理申请的人民法院书面申请复议一次。人民法院应当在收到复议申请之日起五日内作出答复”的规定，构成程序违法。对此本院认为，民事诉讼证据规定已于2019年进行修正并于2020年5月1日起施行，修正后的民事诉讼证据规定已删除原规定中第十九条的上述内容，对“不予准许”的告知形式以及申请人的复议权均未作出规定，而万琪公司申请原审法院调查收集证据发生在2020年5月1日之后，故原审法院在原审判决中阐述不予准许的理由，未另行制作通知书并送达万琪公司，并不构成程序违法。万琪公司该项上诉理由不能成立，本院不予支持。

综上所述，万琪公司的上诉请求不能成立，应予驳回；原审判决认定事实清楚，适用法律正确，应予维持。依照《中华人民共和国民事诉讼法》第一百七十条第一款第一项之规定，判决如下：

### 裁判结果

驳回上诉，维持原判。

二审案件受理费113000元，由内蒙古万琪机械加工股份有限公司负担。

本判决为终审判决。

### 审判人员

审 判 长：何鹏

审 判 员：梁晓征

审 判 员：欧宏伟

二〇二一年九月七日

法官助理：罗浪

内蒙古万琪机械加工股份有限公司、鄂尔多斯市乌兰煤炭（集团）有限责任公司温家塔煤矿侵害发明专利权纠纷民事二审民事判决书

书 记 员：管众

裁判要点

案 号

（2021）最高法知民终 420 号

案 由

侵害发明专利权纠纷

合 议 庭

审判长：何鹏

审判员：梁晓征、欧宏伟

法官助理：罗浪

书记员：管众

裁判日期

2021 年 9 月 7 日

涉案专利

“采煤巷道电缆支架车”发明专利

（ZL201210382197.0）

关 键 词

侵害发明专利权；举证责任；申请调查取证

当 事 人

上诉人（原审原告）：内蒙古万琪机械加工股份有限公司；

被上诉人（原审被告）：鄂尔多斯市乌兰煤炭（集团）有限责任公司温家塔煤矿。

裁判结果

驳回上诉，维持原判。

原判主文：驳回内蒙古万琪机械加工股份有限公司的诉讼请求。

涉案法条

《中华人民共和国民事诉讼法》第六十四条第一款、第二款；

《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》第九十四条。

法律问题

专利侵权诉讼中人民法院对当事人调查取证申请的审查

裁判观点

1. 民事诉讼法第六十四条第二款规定的当事人及其诉讼代理人因客观原因不能自行收集的证据包括：（一）证据由国家有关部门保存，当事人及其诉讼代理人无权查阅调取的；（二）涉及国家秘密、商业秘密或者个人隐私的；（三）当事人及其诉讼代理人因客观原因不能自行收集的其他证据。当事人及其诉讼代理人因客观原因不能自行收集的证据，可以在举证期限届满前书面申请人民法院调查收集。

内蒙古万琪机械加工股份有限公司、鄂尔多斯市乌兰煤炭（集团）有限责任公司温家塔煤矿侵害发明专利权纠纷民事二审民事判决书

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2. 人民法院对当事人调查取证申请的审查，应遵循法定原则和必要性原则，以免损害司法的公平、公正。

注：本摘要并非判决书之组成部分，不具有法律效力。



扫一扫，手机阅读更方便



# **Exhibit B-8**

## How Would a Judge Interpretate Applying for Court-initiated Evidence Collection and Investigation Order

2024-10-09 09:02 Shanghai

Source: Shanghai First Intermediate People's Court (WeChat Official Account)

Author: Shaojun Sun

### Part 01

[Translation Omitted]

### Part 02: Common Misconceptions in and Clarification for Applying for Court-led Evidence Collection and Investigation Orders in Civil Litigation

#### Section 1:

[Translation Omitted]

#### Section 2: Confusion Surrounding the Subject of Production Requests

- Misconceptions:
  - Requesting the court to issue an order compelling the opposing party to produce documentary evidence.
  - Requesting an investigation order to obtain documentary evidence from the opposing party.
- Clarification:
  - Articles 112-113 of the *Interpretation by the Supreme People's Court on the Application of the Civil Procedure Law* and Articles 45-48 of the *Provisions of the Supreme People's Court on Evidence in Civil Litigation* establish the rules for obstruction of evidence, known as **document production orders**. According to these rules, if documentary evidence is under the control of the opposing party, the party bearing the burden of proof may submit a written application before the expiration of the evidence submission period, requesting the court to order the opposing party to produce the evidence. If the court finds the application justified, it shall order the opposing party to submit the evidence. If the opposing party refuses without any just cause, the court may deem the content of the evidence as claimed by the applicant to be true.
  - Whether it is applying for court-led evidence collection or an investigation order, the evidence is obtained from the party investigated. If the applicant submits a written application to request documentary evidence from the opposing party, **the document production order can already serve the same function as court-ordered evidence collection or an investigation order.**

[Translation Omitted]

关于申请法院调查取证&调查令，法官这样说

原创 孙少君 上海一中法院 2024年10月09日 09:02 上海



编者按

庭审是法官、当事人和其他诉讼参与人共同参与的一项诉讼活动，也是审判工作的重要环节。如何规范、有序、高效开庭，上海一中院一直在探索。

官方微信公众号推出《开庭》栏目，聚焦庭审实务，分享一线优秀法官庭审经验。



第32期



**孙少君**  
SUN SHAOJUN

民事庭  
民间借贷纠纷审判团队  
团队负责人  
三级高级法官  
法学硕士



随着我国民事诉讼模式从法官职权主义逐步转向当事人主义，**谁主张、谁举证成为民事诉讼活动遵循的基本举证原则**。为弥补此原则下当事人举证能力不足对案件裁判结果的影响，《民事诉讼法》规定当事人及其诉讼代理人因客观原因不能自行收集的证据，或者人民法院认为审理案件需要的证据，人民法院应当调查收集。司法实践中，亦允许律师在符合规定条件情形下持调查令收集证据。

准确把握申请法院调查取证与申请调查令的条件，避开常见误区，提高申请法院调查取证、调查令的成功率，对于发挥法院调查取证、调查令制度效用，保障案件公平公正审理，提升案件审判效率，具有积极意义。



PART 01

## 申请法院调查取证 与申请调查令的区别与联系



**法院调查取证**，是《民事诉讼法》规定的符合法定情形下由法院进行调查收集证据的一种证据收集方式，其又分为依职权调查与依申请调查。**法院依职权调查收集的证据**，具体包括《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》（以下简称《民诉法解释》）第96条第1款所列的五种情形，即：

- ❖ 涉及可能损害国家利益、社会公共利益的；
- ❖ 涉及身份关系的；
- ❖ 涉及《民事诉讼法》第58条规定诉讼的；
- ❖ 当事人有恶意串通损害他人合法权益可能的；
- ❖ 涉及依职权追加当事人、中止诉讼、终结诉讼、回避等程序性事项的。

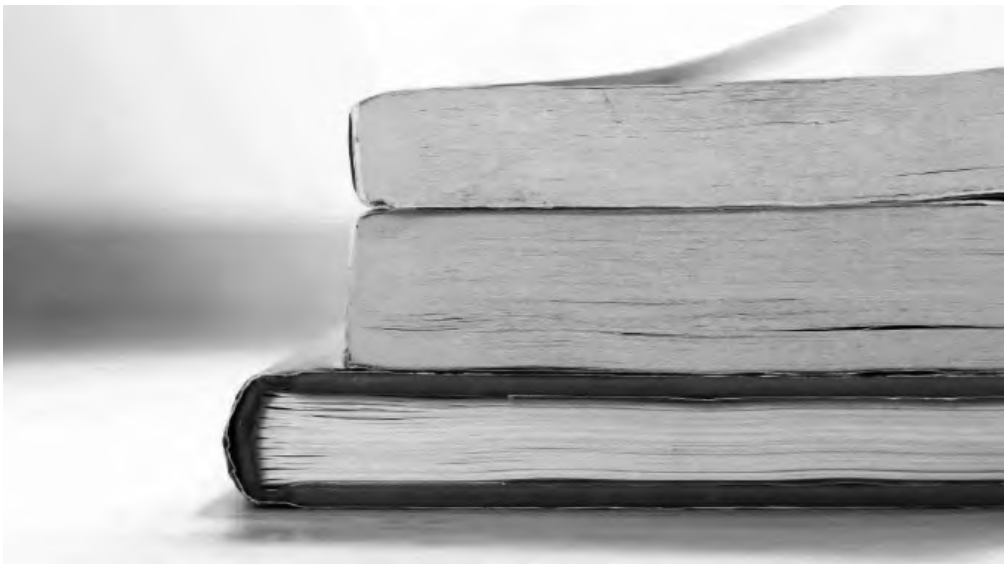
除此之外，法院调查收集证据，应当依照当事人的申请进行。

调查令是指当事人在立案审查阶段、民事诉讼中因客观原因无法取得诉讼所需要的证据，经申请并获法院批准，由法院签发给当事人的诉讼代理律师，由其向有关单位和个人收集所需证据，或申请执行人在执行阶段因无法获取相关证据履行相应举证责任，经申请由法院批准签发的供指定律师向有关单位调查收集特定证据的法律文书。

不同于法院调查取证制度，民事证据调查令制度目前尚未被纳入立法层面，主要由各省、直辖市、自治区高院或部分中院的地方司法文件进行规制。其与法院调查取证在实践适用上主要存在如下区别与联系：

- 1.调查令制度是当事人自行调查取证与申请法院调查取证的法定证据收集方式的补充，其通过法院权利背书的方式，赋予持令调查人在调查收集证据时一定的强制性，既弥补了自行调查取证的不足，也缓解了法院审判压力。
- 2.在当事人委托律师代理诉讼情况下，如所需调取证据属于持调查令可调取范围，当事人申请法院进行调查的，一般不予准许，释明通过申请调查令方式进行取证；如所需调取证据不属于调查令调取范围且符合法院调查取证条件的，由法院进行调查取证。
- 3.调查令的申请与使用，应遵循案件受理法院所适用的地方性调查令司法文件规定，存在不当行为的，将承担相应法律责任。如涉及地方性调查令司法文件未规定情形的，可参照适用申请法院调查取证的相关规定。





1

## 申请调查条件把握存误解

### ■ 误区：

- ❖ 对于自身举证能力范围内的证据，申请法院调查
- ❖ 对于申请法院调查取证、调查令的理由不作说明
- ❖ 所申请调取证据与讼争事项无关，与在审案件无关联性
- ❖ 为其他案件诉讼需要，在本案中申请调取证据
- ❖ 应申请调查令却申请法院调查取证/应申请法院调查取证却申请调查令

### ■ 厘清：

**法院调查取证的前提**是当事人及其诉讼代理人因客观原因不能自行收集相关证据。当事人自身举证能力范围内的证据，不属于法院调查取证范围。

申请调查收集的证据，应当与讼争事项具有关联性，无关联或不影响在审案件处理的，法院不予准许。

法院调查取证制度、调查令制度各有其制度功能及适用范围，应予遵从。

### ■ 应对：

- ❖ 充分发挥自身举证能力，穷尽自行取证方式。



- ❖ 详细说明所需调取证据与讼争事项的关联性与必要性。
- ❖ 查核了解案件受理法院所适用地方性司法文件对调查令签发条件的规定，必要时向被调查人核实其处可接受的协助调查方式。

各地方司法文件对于不属于调查令调取之证据范围的规定不一，所列举情形有：

- ❖ 涉及国家秘密的；
- ❖ 涉及个人隐私的；
- ❖ 涉及商业秘密的；
- ❖ 证人证言；
- ❖ 法院生效案件卷宗材料；
- ❖ 仲裁案件卷宗材料；
- ❖ 公安机关尚在侦查或者撤销的刑事案件材料；
- ❖ 公安机关在履行职责中获得的行动轨迹、住宿记录等个人信息，但已经在其他案件中作为证据使用的除外；
- ❖ 破产申请审查阶段被申请人的财产、债权债务状况；
- ❖ 已经向社会公开的政府信息或者其他信息；
- ❖ 其他不宜以调查令形式调查取证的情形。

**关于银行交易记录，不同银行要求不同，部分允许持调查令调查，部分仍要求由法院进行调查取证。**

**关于社保缴纳信息，不同省市操作方式不一。目前本市社保管理中心基于对公民个人信息的保护，一般仅接受法院实地或发函进行调查取证。**

2

### 申请调查对象指向有偏差

■ 误区：

- ❖ 申请法院向对方当事人调取书证
- ❖ 申请调查令向对方当事人调取书证

#### ■ 厘清：

《民诉法解释》第112-113条、《最高人民法院关于民事诉讼证据的若干规定》第45-48条规定有书证的证明妨害规则，也即**书证提出命令**。依据相关规则，书证在对方当事人控制之下的，承担举证证明责任的当事人可以在举证期限届满前书面申请人民法院责令对方当事人提交；法院经审查，申请理由成立的，应当责令对方当事人提交，对方当事人无正当理由拒不提交的，可以认定申请人所主张的书证内容为真实。

不论是申请法院调查取证，还是申请调查令，均系向被调查人调取证据，在申请人要求调取书证的被调查人为对方当事人的情况下，**书证提出命令**已可起到法院调查取证、调查令制度的作用。

#### ■ 应对：

- ❖ 如所需证据为书证且由对方当事人控制掌握的，可申请责令对方当事人提交相关书证，并充分说明相关书证与讼争事项的关联性、必要性。
- ❖ 如对方当事人否认控制掌握相关书证的，尽力提供对方当事人控制掌握相关书证的证据。

### 3

#### 调查申请内容表述欠规范

#### ■ 误区：

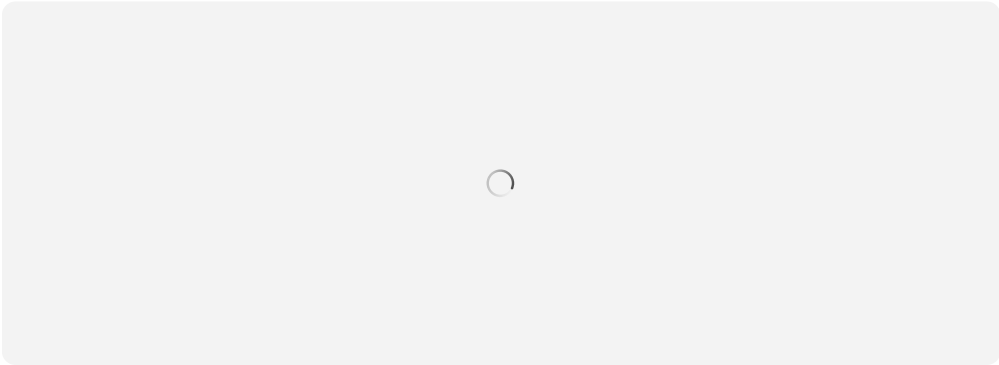
- ❖ 所提供被调查人的姓名、名称等信息不准确
- ❖ 对于所申请调取证据的具体范围不明确或用“案件相关材料”等概括性表述
- ❖ 未写明持令人信息或不完整

#### ■ 厘清：

被调查人的姓名或名称、所需调查收集证据的名称及具体范围是法院调查取证或持调查令收集证据得以顺利进行的基础和前提，持令人信息更是法院开具调查令的必要前提，应当明晰、完整、准确。

■ 应对：

- ❖ 提交申请前仔细核对被调查人的姓名、名称。如不确定的，先行向被调查人核实。如所需证据涉及微信、支付宝、淘宝、拼多多、抖音等平台信息记录的，目前已有微信推文汇总相关平台公司名称及注意事项，可检索查知。
- ❖ 详细列明所需调取证据的名称及具体范围。如涉及银行交易记录的，注明相应期间，并根据举证需要进一步明确交易对手、备注、摘要、具体交易时间等信息范围；涉及档案材料的，明确所需具体材料名称；涉及社保、公积金的，根据需要明确参保单位名称、缴费标准、提取时间等信息范围，并写明所涉参保人的身份证号码；等。
- ❖ 按要求写明持令人的姓名、所在律所、执业证号等基本信息。





1.当事人及其诉讼代理人在民事诉讼中申请法院调查收集证据、调查令，**一般应在举证期限届满前提交书面申请。**

《民事诉讼证据规定》第20条明确规定当事人及其诉讼代理人申请法院调查收集证据，**应当在举证期限届满前提交书面申请。**对于调查令的申请，各地方性司法文件规定不一，既有要求在举证期限届满前一定期限内提出，也有规定在法庭辩论结束前申请，可按照案件受理法院所适用司法文件执行。

逾期申请法院调查或调查令的，可比照《民事诉讼法》第68条第2款、《民诉法解释》第101条、102条处理。

2.申请法院调查取证、调查令前，除按常理应由被调查人持有、保管相关证据的，一般应向被调查人核实其处有无所需调取证据。

法院调查收集提供证据、持令人凭调查令收集证据，以被调查人持有、保管所调查证据为前提。为减少不必要讼累，如被调查人处有无相关证据存在不确定性的，应先行核实。

3.申请调查令，应提交申请书、当事人的授权委托书、律师事务所函或法律援助公函、代理律师的有效执业证书。部分地方性调查令司法文件规定需要提供调查令使用承诺书、保密承诺书的，按要求提交。

对于申请调查令时持令人即执业律师的人数，因《民诉法解释》第97条规定“人民法院调查收集证据，应当由两人以上共同进行”，实践中多参照该规定要求申请人提供两名执业律师信息。部分地方性调查令司法文件也允许一名律师或由实习律师作为随行人员持令调查。

本市现可申请电子调查令，途径：

❖ **PC端**，通过电脑浏览器搜索“上海法院诉讼服务网”

或 直 接 输 入 上 海 法 院 诉 讼 服 务 网 网 址  
<http://www.hshfy.sh.cn/shwfy/ssfww/>，登录律师平台后，进入“调查收集证据”，按要求填写信息提交申请；

❖ **移动端**，微信搜索“上海法院12368”公众号，进入“诉讼服务—律师—调查令”，按要求填写信息提交申请。

4.调查令存在有效期限定，期限届满后自动失效。调查令持令人因故未使用调查令或被调查人不能提供证据时，应当在受理案件法院所适用地方性司法文件规定期限内，将纸质调查令及被调查人不能提供证据的书面说明一并交还法院，以归入案卷。如系电子调查令的，持令人亦须在规定期限内向调查令签发法院反馈相关情况。

5.持令人在使用调查令过程中存在不当行为的，将根据情节轻重承担相应责任。

各地方调查令司法文件规定的不当行为包括：

- ❖ 伪造、变造调查令的；
- ❖ 持伪造、变造的调查令调查收集证据的；
- ❖ 伪造、变造、隐匿或者毁灭持调查令调查收集到的证据的；
- ❖ 擅自复制、泄露、散布持律师调查令收集的证据的；
- ❖ 利用持律师调查令调查收集到的证据对案件进行歪曲、失实、误导性宣传，影响案件办理的；
- ❖ 利用持律师调查令收集的证据诋毁对方当事人声誉的；

- ❖ 未经法院允许私自拆封被调查人密封的调查证据的；
- ❖ 无正当理由未按期提交调查收集的全部证据、调查令或回执的；
- ❖ 其他不当使用调查令或滥用调查证据的情形。

相关责任包括：

- ❖ 在一定期限内或在该案中不再向持令人签发调查令；
- ❖ 由法院向司法行政机关或律师协会提出司法建议，对持令人予以处罚或惩戒；
- ❖ 构成妨害民事诉讼行为的，依照《民事诉讼法》第114条规定，根据情节轻重予以罚款、拘留；
- ❖ 构成犯罪的，依法追究刑事责任；
- ❖ 给他人造成损害的，承担相应民事责任。

此外，律师事务所未尽到管理义务导致律师出现上述情形的，法院可以建议司法行政机关或律师协会给予行政处罚或行业惩戒。

获准共同参与调查的人员存在不当使用调查令或者滥用调查证据行为的，可视情节轻重，予以训诫、罚款或者司法拘留，司法行政机关依法吊销律师执业证书；构成犯罪的，依法追究刑事责任。

## 6.被调查人的权利义务

- ❖ 对于依规出具的调查令指定调查内容以外的事项，有权拒绝。
- ❖ 无正当理由拒绝或妨碍持令律师调查取证的，依据各地方调查令司法文件，可能承担的责任包括：
  - 责令履行协助义务；
  - 视情节轻重，依照《民事诉讼法》第114条规定予以处罚。



1.当事人在立案审查阶段申请调查令的范围仅限于法院能否立案的程序性证据，如所需调查收集的证据涉及实体问题的，应在立案后向审判庭申请。

程序性证据主要包括：

- ❖ 当事人的诉讼主体资格情况；
- ❖ 法院对涉诉纠纷管辖权情况；
- ❖ 其他需要开具调查令调查的证据。

存在涉及国家机密、个人隐私或其他不宜由诉讼代理律师凭调查令自行调查收集的证据，不予签发调查令。

2.执行阶段调查令适用于被执行人有无实际履行能力的证据的调查收集，包括：

- ❖ 被执行人的基本情况；
- ❖ 被执行人的财产情况；



❖

被执行人是否对第三人享有到期债权以及第三人的财产情况；

❖

能够证明被执行人有无实际履行能力的其他情况。

涉及国家机密、商业秘密、与执行案件无关、法律法规明确规定必须由人民法院执行人员调查收集或其他不宜持令调查的证据，不得使用调查令。

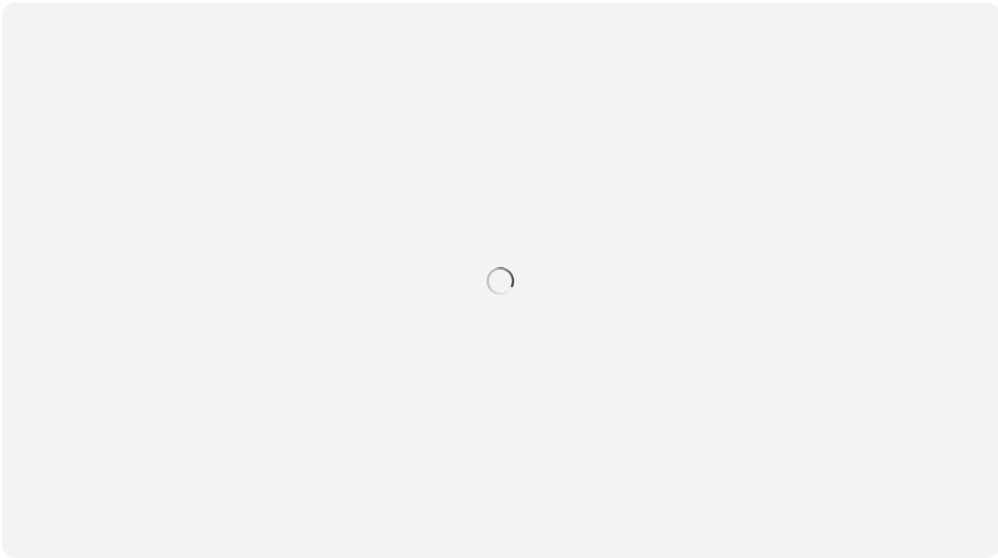


值班编辑：王梦茜



约！

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开庭 · 目录 ≡

＜ 上一篇

域外证据如何提供和审查，法官这么说

下一篇 ＞

关于专业性事实的审查，法官这样说



# **Exhibit B-9**

## 最高人民法院关于民事诉讼证据的若干规定（2019 修正）

发 文 机 关 ： 最高人民法院	Promulgated by:	Supreme People's Court
发 布 日 期 ： 2019.12.25	Promulgation Date:	2019.12.25
生 效 日 期 ： 2020.05.01	Effective Date:	2020.05.01
时 效 性 ： 现行有效	Validity Status:	valid
文 号 ： 法释〔2019〕19 号	Document No.:	Fa Shi [2019] No.19

### 最高人民法院关于民事诉讼证据的 若干规定

法释〔2019〕19 号

《最高人民法院关于修改〈关于民事诉讼证据的若干规定〉的决定》已于 2019 年 10 月 14 日由最高人民法院审判委员会第 1777 次会议通过，现予公布，自 2020 年 5 月 1 日起施行。

最高人民法院

2019 年 12 月 25 日

### 最高人民法院关于民事诉讼证据的 若干规定

（2001 年 12 月 6 日最高人民法院审判委员会第 1201 次会议通

### Several Provisions of the Supreme People's Court on Evidence for Civil Actions (Amended in 2019)

Fa Shi [2019] No.19

The Decision of the Supreme People's Court on Revising the Several Provisions on Evidence for Civil Actions, adopted at the 1777th session of the Judicial Committee of the Supreme People's Court on October 14, 2019, is hereby promulgated, effective May 1, 2020.

Supreme People's Court

December 25, 2019

Several Provisions of the Supreme People's Court on Evidence for Civil Actions

(Adopted at the 1201st session of the Judicial Committee of the Supreme People's Court on 6 December 2001, and amended at the 1777th session of the Judicial Committee of the Supreme People's Court on 14 October 2019 according to the Decision on Revising the Several Provisions on Evidence for Civil Actions)

These Provisions are formulated pursuant to the provisions of the Civil Procedure Law of the People's Republic of China (hereinafter referred to as the "Civil Procedure Law") and related laws, taking into account civil trial experience and actual conditions, for the purposes of ensuring correct determination of facts of cases by

过 根据 2019 年 10 月 14 日最高人民法院审判委员会第 1777 次会议《关于修改〈关于民事诉讼证据的若干规定〉的决定》修正）

为保证人民法院正确认定案件事实，公正、及时审理民事案件，保障和便利当事人依法行使诉讼权利，根据《中华人民共和国民事诉讼法》（以下简称民事诉讼法）等有关法律的规定，结合民事审判经验和实际情况，制定本规定。

一、当事人举证第一条原告向人民法院起诉或者被告提出反诉，应当提供符合起诉条件的相应的证据。第二条人民法院应当向当事人说明举证的要求及法律后果，促使当事人在合理期限内积极、全面、正确、诚实地完成举证。

当事人因客观原因不能自行收集的证据，可申请人民法院调查收集。

第三条在诉讼过程中，一方当

people's courts, fair and prompt trial of civil cases, protecting and facilitating exercise of litigation rights by litigants pursuant to the law.

## I. Burden of Proof by the Parties

Article 1 A plaintiff who files a lawsuit with a people's court or a defendant who files a counterclaim shall provide the corresponding evidence which satisfy the prosecution criteria. Article 2 The people's court shall inform the parties to a case of the requirements for producing evidence and the legal consequences to facilitate the production of evidence on an active, comprehensive, accurate and honest basis within a reasonable period of time. Any party who, on objective grounds, is unable to gather evidence independently, may apply for investigation and evidence collection by the people's court. Article 3 Where, in the course of litigation, any party states any fact unfavorable to itself or explicitly admits any fact unfavorable to itself, the other party need not produce evidence to prove the same. Where, in the course of exchanging evidence, making inquiries, conducting investigations, or in any written materials such as any statement of claim, statement of defense, or statement made by an agent, any of the parties explicitly admits to a fact which is unfavorable to itself, the provisions of the preceding paragraph shall apply. Article 4 Where one party neither acknowledges nor denies facts asserted by the other party which are unfavorable to itself, and upon explanation and enquiry by the judge, the party still does not explicitly express confirmation or denial, it shall be deemed to have acknowledged the facts. Article 5 Where a litigant entrusts an agent ad litem to participate in the lawsuit, except for matters specifically excluded in the power of attorney, the acknowledgement by the agent ad litem shall be deemed as acknowledgement by the litigant. Where a party concerned present explicitly denies the self-confession made by the agent ad litem, it shall not be deemed as self-confession. Article 6 In an ordinary joint action, the confession made by one or several of the joint litigants shall be binding on the party that makes the confession. For a necessary joint action, if one or several of the joint litigants make a confession but other joint

事人陈述的于己不利的事实，或者对于己不利的事实明确表示承认的，另一方当事人无需举证证明。

在证据交换、询问、调查过程中，或者在起诉状、答辩状、代理词等书面材料中，当事人明确承认于己不利的事实的，适用前款规定。

第四条一方当事人对于另一方当事人主张的于己不利的事实既不承认也不否认，经审判人员说明并询问后，其仍然不明确表示肯定或者否定的，视为对该事实的承认。

第五条当事人委托诉讼代理人参加诉讼的，除授权委托书明确排除的事项外，诉讼代理人的自认视为当事人的自认。

当事人在场对诉讼代理人的自认明确否认的，不视为自认。

第六条普通共同诉讼中，共同诉讼人中一人或者数人作出的自认，对作出自认的当事人发生效

litigants deny such confession, such confession shall not take effect. Where the other co-litigants do not acknowledge or deny, and do not state their opinions clearly upon explanation and enquiry by the judge, they shall be deemed as confession by all co-litigants. Article 7 Where one party to a lawsuit acknowledges, with restrictions or conditions, a fact asserted by the other party to the lawsuit unfavorable to him/her, the people's court shall take into account the facts of the lawsuit in deciding whether the acknowledgment constitutes a self-confession. Article 8 The provisions on self-confession shall not apply to facts stipulated in the first paragraph of Article 96 of the Interpretations of the Supreme People's Court on Application of the Civil Procedure Law of the People's Republic of China. Where a self-confessed fact is inconsistent with an ascertained fact, the people's court shall not confirm it. Article 9 Under any of the following circumstances, if a party concerned revokes a self-confession before the conclusion of the court debate, the people's court shall approve the revocation: (I) Where the consent of the other party is obtained; or

(II) Where the self-confession is made under coercion or major misunderstanding.

The people's court shall make a verbal or written ruling if it allows revocation of self-confession by a litigant.

Article 10 A party concerned does not need to bear the burden of proof for the following facts: (I) Natural laws, theorems and laws;

(II) Facts known to all;

(III) Facts that are induced as per legal provisions;

(IV) Another fact that is inferred from a known fact or from the rule of everyday life experience;

(V) Any fact confirmed in an award of an arbitration institution that has taken effect;

(VI) Basic facts confirmed in the judgment of the people's court that

力。

必要共同诉讼中，共同诉讼人中一人或者数人作出自认而其他共同诉讼人予以否认的，不发生自认的效力。其他共同诉讼人既不承认也不否认，经审判人员说明并询问后仍然不明确表示意见的，视为全体共同诉讼人的自认。

第七条一方当事人对于另一方当事人主张的于己不利的事实有所限制或者附加条件予以承认的，由人民法院综合案件情况决定是否构成自认。第八条《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》第九十六条第一款规定的事实，不适用有关自认的规定。

自认的事实与已经查明的事实不符的，人民法院不予确认。

第九条有下列情形之一的，当事人在法庭辩论终结前撤销自认的，人民法院应当准许：

has taken effect; or

(VII) Facts that have been proved in valid notarial documents.

Facts mentioned in item (II) to item (V) of the preceding paragraph shall be excluded where a litigant has evidence to the contrary to rebut; facts mentioned in item (VI) and item (VII) shall be excluded where a litigant has evidence to the contrary to rebut.

Article 11 When producing evidence to the people's court, the parties shall submit the original document or item of evidence.

Where the party needs to retain the original document or item of evidence or where it is difficult to submit the original document or item of evidence, a photocopy or reproduction verified by the people's court to be true may be submitted instead.

Article 12 Where movable property is used as evidence, the original item shall be submitted to the people's court. Where the original item is unsuitable for removal or preservation, the party concerned may provide replication, image data or any other substitute. Upon receipt of the movables or substitutes submitted by the litigants, the people's court shall promptly notify both parties to the lawsuit to inspect the movables or substitutes at the people's court or at the premises.

Article 13 Where a party concerned uses a real estate as evidence, it shall provide image materials of the real estate to the people's court concerned. Where a people's court deems necessary, it shall notify both parties to the lawsuit to be present for inspection.

Article 14 Electronic data shall include the following information and electronic documents: (I) Information published on such online platforms as webpages, blogs and microblogs;

(II) Communication information of network application services such as short message, email, instant messaging, communication groups, etc.;

(III) User registration information, identity expert opinion information, electronic transaction records, communication records, login logs and other information;



<p>（一）经对方当事人同意的；</p>	<p>(IV) Documents, pictures, audio, video, digital certificates, computer programs and other electronic documents; and</p>
<p>（二）自认是在受胁迫或者重大误解情况下作出的。</p>	<p>(V) Other information stored, processed or transmitted in a digital form, which can prove the facts of the case.</p>
<p>人民法院准许当事人撤销自认的，应当作出口头或者书面裁定。</p>	<p>Article 15 Any party who takes audio-visual materials as evidence shall provide the original carrier on which such audio-visual materials are stored. Any party who presents any electronic data as evidence shall provide the original document. A duplicate copy of an electronic data produced by its producer which is consistent with the original copy, or a printout of electronic data or any other visible and recognizable output media, shall be deemed as an original copy of the electronic data.</p>
<p>第十条下列事实，当事人无须举证证明：</p>	<p>Article 16 Where the documentary evidence provided by a party concerned is formed outside the territory of the People's Republic of China, such evidence shall be notarized by a notary organ of the country where it is formed, or the procedures for certification shall be completed according to the relevant treaty concluded between the People's Republic of China and the country.</p>
<p>（一）自然规律以及定理、定律；</p>	<p>Any evidence formed outside the territory of the People's Republic of China and involving identity relations shall be notarized by a notary organ of the country where the evidence is formed and authenticated by the embassy or consulate of the People's Republic of China in that country, or the procedures for certification shall be completed according to the relevant treaty concluded between the People's Republic of China and the country.</p>
<p>（二）众所周知的事实；</p>	<p>Where any evidence submitted by a party is sourced from Hong Kong, Macao or Taiwan, the relevant certification formalities shall be completed.</p>
<p>（三）根据法律规定推定的事实；</p>	<p>Article 17 Any document or specification materials written in a foreign language submitted by any party to the people's court shall be accompanied with a Chinese translation.</p>
<p>（四）根据已知的事实和日常生活经验法则推定出的另一事实；</p>	<p>Article 18 Where the undisputed facts of both parties fall under the circumstances stipulated in the first paragraph of Article 96 of the Interpretations of the Supreme People's Court on Application of the Civil</p>
<p>（五）已为仲裁机构的生效裁决所确认的事实；</p>	
<p>（六）已为人民法院发生法律效力裁判所确认的基本事实；</p>	
<p>（七）已为有效公证文书所证</p>	

明的事实。

前款第二项至第五项事实，当事人有相反证据足以反驳的除外；第六项、第七项事实，当事人有相反证据足以推翻的除外。

第十一条当事人向人民法院提供证据，应当提供原件或者原物。如需自己保存证据原件、原物或者提供原件、原物确有困难的，可以提供经人民法院核对无异的复制件或者复制品。第十二条以动产作为证据的，应当将原物提交人民法院。原物不宜搬移或者不宜保存的，当事人可以提供复制品、影像资料或者其他替代品。

人民法院在收到当事人提交的动产或者替代品后，应当及时通知双方当事人到人民法院或者保存现场查验。

第十三条当事人以不动产作为证据的，应当向人民法院提供该不动产的影像资料。

Procedure Law of the People's Republic of China, the people's court may order the parties concerned to provide the relevant evidence. Article 19 A litigant shall categorize and number the evidential materials submitted, provide a brief explanation on the source of evidential materials, object of proof and contents, sign and affix seal thereon, state the date of submission, and submit the requisite number of duplicate copies based on the number of counterparties. A people's court shall issue a receipt for evidential materials submitted by a litigant, stating the name of the evidence, number of copies and number of pages, and the time of receipt, and the receipt shall be signed or sealed by the handling officer.

## II. Investigation, Collection and Preservation of Evidence

Article 20 To petition the people's court to investigate and collect evidence, any party or its agent ad litem shall submit a written application before the expiration of the time period for producing evidence. The application shall clearly state the basic details of the evidence, such as the name of the person or entity to be investigated, the address thereof, the title or content of the evidence to be investigated and collected, the reason the evidence needs to be investigated and collected by the people's court, the facts that need to be proved, and definite clues. Article 21 Written evidence investigated and collected by a people's court may be in the form of original document or the duplicate or photocopy thereof that is certified to be true. In the case of duplicates or photocopies, the source thereof and the manner in which they were collected shall be stated in the investigation record. Article 22 Physical evidence investigated and collected by a people's court shall consist of the original items. Where it is indeed difficult for the party subject to investigation to provide the original item, a replication or image material may be provided. Where reproduction or image data are provided, the collection of evidence shall be specified in the investigation record. Article 23 When investigating and collecting audio-visual materials and electronic data, a people's court shall require the person under investigation to provide the original carrier. If it is indeed difficult to provide the original carriers, the copies thereof may be provided. Where a copy is provided, the

人民法院认为有必要的，应当通知双方当事人到场进行查验。

第十四条电子数据包括下列信息、电子文件：

（一）网页、博客、微博客等网络平台发布的信息；

（二）手机短信、电子邮件、即时通信、通讯群组等网络应用服务的通信信息；

（三）用户注册信息、身份认证信息、电子交易记录、通信记录、登录日志等信息；

（四）文档、图片、音频、视频、数字证书、计算机程序等电子文件；

（五）其他以数字化形式存储、处理、传输的能够证明案件事实的信息。

第十五条当事人以视听资料作为证据的，应当提供存储该视听资

people's court shall state the source of the copy and the production process in the investigation record.

Where a people's court takes evidence preservation measures for audio-visual materials and electronic data, the provisions of the preceding paragraph shall apply.

Article 24 When investigating and collecting evidence that may need to be authenticated, a people's court shall comply with the relevant technical specifications to ensure that no evidence is contaminated. Article 25 Where a litigant or an interested party applies for preservation of evidence pursuant to the provisions of Article 81 of the Civil Procedure Law, the application form shall state the basic information of the evidence to be preserved, the reason for application for preservation and the type of preservation measures adopted, etc. A litigant applying for preservation of evidence pursuant to the provisions of the first paragraph of Article 81 of the Civil Procedure Law shall apply to the people's court before expiry of the duration for presentation of evidence.

Where there are provisions in laws or judicial interpretations on pre-trial evidence preservation, such provisions shall apply.

Article 26 Where a party concerned or an interested party applies for preservation measures to restrict the use and circulation of the subject matter of preservation such as seizure and detention, or where preservation may cause damage to the holder of the evidence, the people's court shall order the applicant to provide an appropriate guarantee. The guarantee method or amount shall be determined by the people's court comprehensively, based on factors such as the impact of the preservation measures on the holder of the evidence, the value of the subject matter of preservation, the subject matter amount disputed by the litigant or the interested party, etc. Article 27 When preserving evidence, the people's court may require the party concerned or the agent ad litem thereof to be present at the scene. A people's court may, based on an application of a litigant and the specific circumstances, carry out preservation of evidence by way of

料的原始载体。

当事人以电子数据作为证据的，应当提供原件。电子数据的制作者制作的与原件一致的副本，或者直接来源于电子数据的打印件或其他可以显示、识别的输出介质，视为电子数据的原件。

第十六条当事人提供的公文书证系在中华人民共和国领域外形成的，该证据应当经所在国公证机关证明，或者履行中华人民共和国与该所在国订立的有关条约中规定的证明手续。

中华人民共和国领域外形成的涉及身份关系的证据，应当经所在国公证机关证明并经中华人民共和国驻该国使领馆认证，或者履行中华人民共和国与该所在国订立的有关条约中规定的证明手续。

当事人向人民法院提供的证据是在香港、澳门、台湾地区形成的，应当履行相关的证明手续。

seizure, confiscation, audio recording, video recording, replication, expert opinion, inquest, etc., and prepare written records.

Under the circumstances where the purpose of evidence preservation is satisfied, the people's court shall select preservation measures which have the smallest impact on the interests of the evidence holders.

Article 28 In the event that a mistake in the application for evidence preservation causes property losses, if the party concerned requests the applicant to assume compensation liability, the people's court shall uphold such request. Article 29 Upon adoption of pre-trial evidence preservation measures by a people's court, where a litigant files a lawsuit with another people's court which has jurisdiction, the people's court which adopts preservation measures shall, pursuant to an application by the litigant, promptly forward the preserved evidence to the people's court which accepts the lawsuit. Article 30 Where the people's court holds that the facts on which evidence is to be given need to be proved by expert opinions while hearing the case, it shall make explanations to the parties concerned and specify the time limit for the application for expert opinions. Under any of the circumstances stipulated in the first paragraph of Article 96 of the Interpretation of the Supreme People's Court on Application of the Civil Procedure Law of the People's Republic of China, the people's court shall entrust expert opinion ex officio. Article 31 For the application for expert opinion, a party shall file an application within the time limit specified by the people's court and pay the expert opinion fee in advance. Where the party concerned fails to submit an application within the stipulated period or fails to prepay expert costs, the application shall be deemed forfeited. Where any party who bears the burden of proof for a fact on which evidence is to be given fails to file an application for expert opinion or prepay expert cost without any justified reasons within the period specified by the people's court, or refuses to provide relevant materials, thereby making it impossible to ascertain the fact on which evidence is to be given, such party shall bear the legal consequences of the inability to provide evidence. Article 32 Where a people's court approves an

第十七条当事人向人民法院提供外文书证或者外文说明资料，应当附有中文译本。第十八条双方当事人无争议的事实符合《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》第九十六条第一款规定情形的，人民法院可以责令当事人提供有关证据。第十九条当事人应当对其提交的证据材料逐一分类编号，对证据材料的来源、证明对象和内容作简要说明，签名盖章，注明提交日期，并依照对方当事人人数提出副本。

人民法院收到当事人提交的证据材料，应当出具收据，注明证据的名称、份数和页数以及收到的时间，由经办人员签名或者盖章。

二、证据的调查收集和保全第二十条当事人及其诉讼代理人申请人民法院调查收集证据，应当在举证期限届满前提交书面申请。

申请书应当载明被调查人的姓名或者单位名称、住所地等基本情

application for expert opinion , it shall organize both parties to the lawsuit to negotiate and appoint an expert witness who possesses corresponding qualifications. If the parties concerned fail to reach an agreement, the people's court shall designate an expert. Where a people's court entrusts expert opinion ex officio, it may, upon enquiry of the litigants' opinion, designate a qualified expert witness.

After a people's court has determined an expert witness, it shall issue a power of attorney, which shall specify the matters, scope, purpose and time limit for the expert opinion.

Article 33 Prior to commencement of giving an expert opinion, the people's court shall require the expert witness to sign a letter of commitment. The letter of commitment shall state that the expert witness commits to give expert opinion in an objective, equitable and honest manner, and to testify in court, and shall bear legal liability etc. for false expert opinions. Any expert witness guilty of intentionally giving false expert opinions shall be ordered by the people's court to return the expert cost and, depending on the circumstances, be punished pursuant to the provisions of Article 111 of the Civil Procedure Law. Article 34 The people's court shall organize the parties concerned to cross-examine the materials subject to expert opinions. Materials which have not been cross-examined shall not be used as the basis for expert opinion. Subject to the approval of the people's court, an expert witness may obtain evidence, inspect physical evidence and be present at the scene and question a party or witness. Article 35 The expert witness shall give his/her expert opinion within the time limit as determined by the people's court and submit an expert report. Where the expert witness fails to submit an expert report on time without justified reasons, a party may apply to the people's court to entrust another expert report to give the expert opinion. If the people's court permits such change, the expert cost collected by the original expert witness shall be refunded; if the original expert witness refuses to do so, the matter shall be handled in accordance with Paragraph 2 of Article 81 hereof. Article 36 A people's court shall examine an expert report issued by an expert witness to determine



况、所要调查收集的证据名称或者内容、需要由人民法院调查收集证据的原因及其要证明的事实以及明确的线索。

第二十一条人民法院调查收集的书证，可以是原件，也可以是经核对无误的副本或者复制件。是副本或者复制件的，应当在调查笔录中说明来源和取证情况。第二十二条人民法院调查收集的物证应当是原物。被调查人提供原物确有困难的，可以提供复制品或者影像资料。提供复制品或者影像资料的，应当在调查笔录中说明取证情况。第二十三条人民法院调查收集视听资料、电子数据，应当要求被调查人提供原始载体。

提供原始载体确有困难的，可以提供复制件。提供复制件的，人民法院应当在调查笔录中说明其来源和制作经过。

人民法院对视听资料、电子数据采取证据保全措施的，适用前款

whether or not the following details are included:(I) Name of the entrusting court;

(II) Contents and requirements of the entrusted expert opinion;

(III) Materials subject to expert opinion;

(IV) Principles and methods on which the expert opinion is based;

(V) Explanations on the process of giving the expert opinion;

(VI) The expert opinion; and

(VII) Letter of commitment.

The expert report shall be signed or sealed by the expert witness, with the qualification certificate of the expert witness attached. If an expert opinion is given under entrustment, the expert report shall be stamped by the agency issuing the expert report and signed by the persons who engage in expert report.

Article 37 The people's court shall promptly send a copy of the expert report to the parties after receiving it. Any party that has objections to the content of the expert report shall raise such objections in writing within a time limit specified by the people's court.

With regard to an objection raised by a party, the people's court shall require the expert witness to give explanations, statements or supplements. Where the people's court deems it necessary, it may require the expert witness to explain, describe or supplement the content to which the party concerned does not raise an objection.

Article 38 Where the party concerned still raises an objection after receipt of a written reply made by the expert witness, the people's court shall, in accordance with Article 11 of the Measures for the Payment of Litigation Fees, notify the party concerned that raises an objection to prepay the fees for the expert witness to testify in court and notify the expert witness to appear in court. If the party

规定。

第二十四条人民法院调查收集可能需要鉴定的证据，应当遵守相关技术规范，确保证据不被污染。

第二十五条当事人或者利害关系人根据民事诉讼法第八十一条的规定申请证据保全的，申请书应当载明需要保全的证据的基本情况、申请保全的理由以及采取何种保全措施等内容。

当事人根据民事诉讼法第八十一条第一款的规定申请证据保全的，应当在举证期限届满前向人民法院提出。

法律、司法解释对诉前证据保全有规定的，依照其规定办理。

第二十六条当事人或者利害关系人申请采取查封、扣押等限制保全标的物使用、流通等保全措施，或者保全可能对证据持有人造成损失的，人民法院应当责令申请人提供相应的担保。

that has raised the objection fails to pay in advance such fees, it shall be deemed as a waiver of the objection. Where both parties concerned disagree with the expert opinion, the expenses for the expert witness to appear in court shall be shared and prepaid.

Article 39 The fees for the expert witness to appear in court shall be calculated according to the same standard as the fees for the witness to appear in court and shall be borne by the losing party. Where the expert witness is required to appear in court, due to unclear expert opinions or flaws, the expenses on appearing in court shall be borne by the expert witness himself/herself. Where it is confirmed at the time of entrustment with expert opinion by the people's court that the fees for the expert witness to appear in court are included in the expert costs, the litigants are not required to be notified to make prepayment.

Article 40 Where a party applies for an expert opinion to be given anew and is under any of the following circumstances, the people's court shall approve the application: (I) Where the expert witness does not have the appropriate qualification;

(II) Where the procedure under which the expert opinion was given seriously violates any law;

(III) Where the expert opinion obviously has insufficient basis; or

(IV) Other circumstances under which the expert opinion cannot be used as evidence.

If any of the circumstances under Items (I) to (III) of the preceding paragraph occurs, the expert cost already collected by the expert witness shall be refunded. If the expert witness refuses to return the funds, the case shall be dealt with in accordance with the second paragraph of Article 81 hereof.

The people's court shall not approve the application for an expert opinion to be given anew for any flaw in the expert opinion that can be resolved by supplementation and correction, supplementary expert opinion, supplementary cross-examination, or re-cross-



担保方式或者数额由人民法院根据保全措施对证据持有人的影响、保全标的物的价值、当事人或者利害关系人争议的诉讼标的金额等因素综合确定。

第二十七条人民法院进行证据保全，可以要求当事人或者诉讼代理人到场。

根据当事人的申请和具体情况，人民法院可以采取查封、扣押、录音、录像、复制、鉴定、勘验等方法进行证据保全，并制作笔录。

在符合证据保全目的的情况下，人民法院应当选择对证据持有人利益影响最小的保全措施。

第二十八条申请证据保全错误造成财产损失，当事人请求申请人承担赔偿责任的，人民法院应予支持。第二十九条人民法院采取诉前证据保全措施后，当事人向其他有管辖权的人民法院提起诉讼的，采

examination.

Where the expert opinion is given anew, the original expert opinion shall not be used as the basis for determination of the facts of the lawsuit.

Article 41 Where one party entrusts relevant institution or person to issue opinions on specialized issues by itself, and the other party has evidence or reasons sufficient to rebut such opinions and applies for expert opinion, the people's court shall permit the application. Article 42 Upon adoption of an expert opinion, where the expert witness revokes his/her expert opinion without a justified reason, the people's court shall order the expert to return the expert cost, and may punish the expert pursuant to the provisions of Article 111 of the Civil Procedure Law based on the circumstances. Where a party claims that the expert witness shall bear the reasonable additional expenses arising therefrom, the people's court shall uphold such claim. Where the people's court allows the expert witness to revoke his/her expert opinion after the people's court has adopted such opinion, it shall order the expert witness to return the expert cost. Article 43 The people's court shall notify the parties of the time and place of the inspection prior to the inspection. Absence of the party concerned shall not affect the conduct of the inspection. The litigants may provide explanation and clarification on inspection matters to the people's court and may request the people's court to note important matters in the inspection.

The people's court shall take notes on the inspection of physical evidence or any scene, recording the time and venue of the inspection, the inspectors, other people present at the relevant location, the process for and results of the inspection, etc., and have the notes signed or sealed by the inspector and the other people present at the relevant location. For any scene map drawn, the drawing time, location of the scene and the name and identity of the map sketcher shall be specified on the map.

Article 44 Any excerpt relating to case facts that is taken from

取保全措施的人民法院应当根据当事人的申请，将保全的证据及时移交受理案件的人民法院。第三十条 人民法院在审理案件过程中认为待证事实需要通过鉴定意见证明的，应当向当事人释明，并指定提出鉴定申请的期间。

符合《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》第九十六条第一款规定情形的，人民法院应当依职权委托鉴定。

第三十一条当事人申请鉴定，应当在人民法院指定期间内提出，并预交鉴定费用。逾期不提出申请或者不预交鉴定费用的，视为放弃申请。

对需要鉴定的待证事实负有举证责任的当事人，在人民法院指定期间内无正当理由不提出鉴定申请或者不预交鉴定费用，或者拒不提供相关材料，致使待证事实无法查明的，应当承担举证不能的法律后

relevant documentation or materials prepared by a relevant entity shall specify its source and be stamped by such entity, and the person who takes the excerpt and any other investigator shall sign or seal it. Any excerpt taken from documentation or materials shall ensure the completeness thereof. Article 45 Where a litigant applies to the people's court pursuant to the provisions of Article 112 of the Interpretation of the Supreme People's Court on Application of the Civil Procedure Law of the People's Republic of China to order the other party to the lawsuit to submit documentary evidence, the application form shall state the description or contents of the documentary evidence to be submitted, the facts to be proved by the documentary evidence and the significance of the facts, the basis for control of the said documentary evidence by the other party to the lawsuit and the reason for submission of documentary evidence. Where the other party denies the control of the documentary evidence, the people's court shall make a comprehensive judgment on whether the documentary evidence is under the control of the other party in accordance with legal provisions and usual practices and in combination with the facts and evidence of the case. Article 46 When examining an application for submission of documentary evidence by a litigant, the people's court shall heed the opinion of the counterparty litigant, and where necessary, it may require both parties to the lawsuit to provide evidence and debate. Where the documentary evidence submitted by a litigant is unclear, the documentary evidence is unnecessary to prove the facts on which evidence is to be given, the facts on which evidence is to be given have no substantive impact on the judgment outcome, the documentary evidence is not under the control of the counterparty litigant or does not fall under the circumstances stipulated in Article 47 of these Provisions, the people's court shall not approve the application.

Where the application reason of the litigant is tenable, the people's court shall make a ruling, order the counterparty litigant to submit documentary evidence; if the application reason is not tenable, the applicant shall be notified thereof.

果。

第三十二条 人民法院准许鉴定申请的，应当组织双方当事人协商确定具备相应资格的鉴定人。当事人协商不成的，由人民法院指定。

人民法院依职权委托鉴定的，可以在询问当事人的意见后，指定具备相应资格的鉴定人。

人民法院在确定鉴定人后应当出具委托书，委托书中应当载明鉴定事项、鉴定范围、鉴定目的和鉴定期限。

第三十三条 鉴定开始之前，人民法院应当要求鉴定人签署承诺书。承诺书中应当载明鉴定人保证客观、公正、诚实地进行鉴定，保证出庭作证，如作虚假鉴定应当承担法律责任等内容。

鉴定人故意作虚假鉴定的，人民法院应当责令其退还鉴定费用，并根据情节，依照民事诉讼法第一

Article 47 Under any of the following circumstances, any party who controls documentary evidence shall submit documentary evidence: (I) Documentary evidence which has been cited by the party concerned controlling the documentary evidence in the litigation;

(II) Documentary evidence prepared for the interests of the other party concerned;

(III) Documentary evidence which the other party is entitled to consult or obtain in accordance with the law;

(IV) Account books and original vouchers for bookkeeping; or

(V) Other circumstances under which the people's court deems that documentary evidence shall be submitted.

Where the documentary evidence set out in the preceding paragraph involves State secrets, commercial secrets, the privacy of the parties concerned or of a third party, or under circumstances for which confidentiality is stipulated by the laws, cross-examination shall not be conducted openly upon submission.

Article 48 Where a party refuses to submit documentary evidence without justified reasons, the people's court may deem that the contents of the documentary evidence asserted by the counterparty are true. Where a litigant who controls the documentary evidence falls under the circumstances stipulated in Article 113 of the Interpretations of the Supreme People's Court on Application of the Civil Procedure Law of the People's Republic of China, the people's court may rule that the counterparty litigant asserts that the facts proved in the documentary evidence are true.

### III. Time Limit for Producing Evidence and the Exchange of Evidence

Article 49 The defendant shall file a written defense before the expiration of the prescribed time period, stating his/her opinions on the facts and grounds on which the plaintiff's claims are

百一十一条的规定进行处罚。

第三十四条人民法院应当组织当事人对鉴定材料进行质证。未经质证的材料，不得作为鉴定的根据。

经人民法院准许，鉴定人可以调取证据、勘验物证和现场、询问当事人或者证人。

第三十五条鉴定人应当在人民法院确定的期限内完成鉴定，并提交鉴定书。

鉴定人无正当理由未按期提交鉴定书的，当事人可以申请人民法院另行委托鉴定人进行鉴定。人民法院准许的，原鉴定人已经收取的鉴定费用应当退还；拒不退还的，依照本规定第八十一条第二款的规定处理。

第三十六条人民法院对鉴定人出具的鉴定书，应当审查是否具有下列内容：

based. Article 50 A people's court shall serve a notice of the production of evidence on the parties concerned during the preparation period before trial. The notice for the production of evidence shall specify the principles and requirements applicable to the burden of proof, the circumstances under which the parties may request that the people's court investigate and collect evidence, the time period prescribed by the people's court for producing evidence and any legal consequences of a failure to produce evidence within the prescribed time period, etc. Article 51 The duration for presentation of evidence may be negotiated by the litigants and shall be subject to approval by the people's court. Where a people's court stipulates the period for presentation of evidence, the period for trial of a case for which the general procedures of first instance are applicable shall not be less than fifteen days; the period for trial of a case of second instance for which a litigant provides new evidence shall not be less than ten days. The duration for presentation of evidence for cases for which simplified procedures are applicable shall not exceed fifteen days; the duration for presentation of evidence for small claims lawsuits shall generally not exceed seven days.

Upon expiry of the duration for presentation of evidence, where a litigant provides counter-evidence or makes supplementation or correction to flaws in source and form of evidence provided, the people's court may exercise its discretion to re-determine the duration for presentation of evidence, and the said duration shall not be subject to the duration stipulated in the preceding paragraph.

Article 52 Where there is an objective obstacle for a litigant to provide evidence within the stipulated period, this shall fall under the circumstances that "the litigant has genuine difficulty in providing evidence within the stipulated period" stipulated in the second paragraph of Article 65 of the Civil Procedure Law. In any of the circumstances in the preceding paragraph, the people's court shall make a comprehensive judgment based on the factors such as the ability of the party to produce evidence and the reason why the party cannot produce evidence within the time limit for

<p>（一）委托法院的名称；</p> <p>（二）委托鉴定的内容、要求；</p> <p>（三）鉴定材料；</p> <p>（四）鉴定所依据的原理、方法；</p> <p>（五）对鉴定过程的说明；</p> <p>（六）鉴定意见；</p> <p>（七）承诺书。</p> <p>鉴定书应当由鉴定人签名或者盖章，并附鉴定人的相应资格证明。委托机构鉴定的，鉴定书应当由鉴定机构盖章，并由从事鉴定的人员签名。</p> <p>第三十七条人民法院收到鉴定书后，应当及时将副本送交当事人。</p> <p>当事人对鉴定书的内容有异议的，应当在人民法院指定期间内以</p>	<p>producing evidence. If necessary, the people's court may listen to the opinions of the other party. Article 53 In the course of litigation, where the nature of the legal relationship or the validity of the civil act alleged by the parties concerned is inconsistent with the determination by the people's court based on the facts of the case, the people's court shall try the case with the nature of the legal relationship or the validity of the civil act as the focus. However, exceptions apply to cases in which the nature of the legal relationship has no effect on the grounds and result of the judgment, or the related issues have been fully debated by the parties. Where any of the circumstances in the preceding paragraph occurs, and a party concerned changes the claims according to the situation of court trial, the people's court shall allow such change and may specify a new time limit for adduction of evidence according to the specific situation of the case. Article 54 A litigant applying for an extension of duration for presentation of evidence shall submit an application in writing to the people's court before expiry of the duration for presentation of evidence. Where the reason for application is valid, the people's court shall approve the application, extend the duration for presentation of evidence appropriately and notify the other litigants. The extended duration for presentation of evidence shall apply to the other litigants.</p> <p>If the application reason is untenable, the people's court shall not permit the application, and notify the applicant.</p> <p>Article 55 Under any of the following circumstances, the time limit for adduction of evidence shall be determined as follows: (I) Where a party concerned raises an objection to jurisdiction in accordance with Article 127 of the Civil Procedure Law, the period for adducing evidence shall be suspended, and the period shall be resumed from the date when the ruling rejecting the objection to jurisdiction takes effect;</p> <p>(II) Where a party concerned is added, or a third party with an independent claim to a case is added, or a third party without an independent claim to a case is notified by a people's court to</p>
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书面方式提出。

对于当事人的异议，人民法院应当要求鉴定人作出解释、说明或者补充。人民法院认为有必要的，可以要求鉴定人对当事人未提出异议的内容进行解释、说明或者补充。

第三十八条当事人在收到鉴定人的书面答复后仍有异议的，人民法院应当根据《诉讼费用交纳办法》第十一条的规定，通知有异议的当事人预交鉴定人出庭费用，并通知鉴定人出庭。有异议的当事人不预交鉴定人出庭费用的，视为放弃异议。

双方当事人对鉴定意见均有异议的，分摊预交鉴定人出庭费用。

第三十九条鉴定人出庭费用按照证人出庭作证费用的标准计算，由败诉的当事人负担。因鉴定意见不明确或者有瑕疵需要鉴定人出庭的，出庭费用由其自行承担。

participate in the case, the people's court shall, in accordance with Article 51 hereof, determine the time limit for adduction of evidence for new parties to the case, and such time limit for adduction of evidence shall apply to other parties;

(III) For a case remanded for retrial, the people's court of first instance may, at its discretion, determine the time limit for adduction of evidence in combination with the specific circumstances of the case and the reasons for remanding for retrial;

(IV) Where the party concerned adds or changes the claims or lodges the counterclaim, the people's court shall re-determine the time limit for adduction of evidence according to the specific circumstances of the case; or

(V) If the documents are served by public notice, the time limit for adduction of evidence shall be counted from the day after the expiration of the public notice.

Article 56 Where a people's court carries out pre-trial preparation through organizing exchange of evidence pursuant to the provisions of item (4) of Article 133 of the Civil Procedure Law, the date of exchange of evidence shall be the date on which the duration for presentation of evidence expires. The timing of evidence exchange may be agreed upon by the parties through negotiation, subject to the approval of the people's court, or may be determined by the people's court. Where the application of any party for an extension of the time period for producing evidence is approved by the people's court, the date for exchanging evidence shall be postponed accordingly. Article 57 The exchange of evidence shall be presided over by the judge. In the course of exchanging evidence, the judge shall record in the case file the facts and evidence to which the parties have no objection. If any party raises an objection to any piece of evidence, the evidence in question shall be classified according to the facts to be proved and recorded in the case file, and the reason for the objection shall be specified. Through the exchange of evidence, the major issues of



人民法院委托鉴定时已经确定鉴定人出庭费用包含在鉴定费用中的，不再通知当事人预交。

第四十条当事人申请重新鉴定，存在下列情形之一的，人民法院应当准许：

（一）鉴定人不具备相应资格的；

（二）鉴定程序严重违法的；

（三）鉴定意见明显依据不足的；

（四）鉴定意见不能作为证据使用的其他情形。

存在前款第一项至第三项情形的，鉴定人已经收取的鉴定费用应当退还。拒不退还的，依照本规定第八十一条第二款的规定处理。

对鉴定意见的瑕疵，可以通过补正、补充鉴定或者补充质证、重新质证等方法解决的，人民法院不

dispute between the parties shall be determined. Article 58 Where, after the receipt of the evidence submitted by the other party, any rebuttal evidence needs to be submitted, the people's court shall arrange for another exchange of evidence. Article 59 Where a people's court imposes a fine on a litigant who provides evidence beyond the stipulated period, the fine amount may be determined taking into account factors such as the subjective fault extent for which the litigant provides evidence beyond the stipulated period, the circumstances which cause a delay in the lawsuit, the subject matter amount of litigation, etc. IV. Cross-examination Article 60 Evidence for which a party concerned has given cross-examination opinion in the preparation phase prior to trial or in the investigation or questioning process of the people's court shall be deemed as cross-examination evidence. Where a litigant requests for a written cross-examination opinion, and the people's court deems necessary after listening to the opinion of the counterparty, the people's court may approve the request. The people's court shall promptly deliver its written cross-examination opinions to the other party concerned. Article 61 In the cross-examination of documentary evidence, physical evidence and audio-visual reference materials, the parties shall produce the original document or item of the evidence. However, exceptions apply to any of the following circumstances: (I) where it is indeed difficult to require that the original document or item be presented and the people's court has approved the presentation of a photocopy or reproduction thereof; or

(II) where the original document or item no longer exists but evidence demonstrates that the photocopy or reproduction submitted is identical to the original document or article.

Article 62 Cross-examination shall generally be conducted in the following order: (I) The plaintiff presents evidence and the defendant, any third party, and the plaintiff cross-examine;

(II) The defendant presents evidence and the plaintiff, any third party, and the defendant cross-examine; and



予准许重新鉴定的申请。

重新鉴定的，原鉴定意见不得作为认定案件事实的根据。

第四十一条对于一方当事人就专门性问题自行委托有关机构或者人员出具的意见，另一方当事人有证据或者理由足以反驳并申请鉴定的，人民法院应予准许。第四十二条鉴定意见被采信后，鉴定人无正当理由撤销鉴定意见的，人民法院应当责令其退还鉴定费用，并可以根据情节，依照民事诉讼法第一百一十一条的规定对鉴定人进行处罚。当事人主张鉴定人负担由此增加的合理费用的，人民法院应予支持。

人民法院采信鉴定意见后准许鉴定人撤销的，应当责令其退还鉴定费用。

第四十三条人民法院应当在勘验前将勘验的时间和地点通知当事人。当事人不参加的，不影响勘验

(III) The third party presents evidence, and the plaintiff, the defendant and the third party cross-examine.

In the case of evidence investigated and collected by the people's court based on an application by a litigant, upon explanation by the judge of the investigation and collection of evidence, the litigant who makes the application shall conduct cross-examination against the counterparty litigant and the third party.

With respect to evidence investigated and collected by a people's court according to its authority, the judges shall first explain the circumstances in which the evidence is investigated and collected and then listen to the opinions of the parties.

Article 63 The parties shall make true and complete statements on the facts of the case. Where there is any inconsistency between the representation of the parties concerned and their previous representation, the people's court shall order the parties concerned to state the reason, and take into account the litigation capacity of the parties concerned, the evidence and the specific circumstances of the case for examination and confirmation.

Where a party intentionally makes a false statement, thus obstructing the trial of the case by the people's court, the people's court shall impose a penalty thereon in accordance with Article 111 of the Civil Procedure Law depending on the circumstances.

Article 64 A people's court may, where it deems necessary, require a litigant to be present personally to be questioned on the relevant facts of the lawsuit. Where a people's court requires a litigant to be present on the spot to accept questioning, it shall notify the litigant of the time and venue of questioning, consequences for refusal to be present, etc. Article 65 The people's court shall order the party concerned to sign a letter of guarantee and read out the content thereof before inquiry. The letter of guarantee shall state that the representation is true and shall not be concealed, distorted, added or subtracted, and that the offender shall be punished for any false representation, etc. The litigant shall sign and has his/her finger

进行。

当事人可以就勘验事项向人民法院进行解释和说明，可以请求人民法院注意勘验中的重要事项。

人民法院勘验物证或者现场，应当制作笔录，记录勘验的时间、地点、勘验人、在场人、勘验的经过、结果，由勘验人、在场人签名或者盖章。对于绘制的现场图应当注明绘制的时间、方位、测绘人姓名、身份等内容。

第四十四条摘录有关单位制作的与案件事实相关的文件、材料，应当注明出处，并加盖制作单位或者保管单位的印章，摘录人和其他调查人员应当在摘录件上签名或者盖章。

摘录文件、材料应当保持内容相应的完整性。

第四十五条当事人根据《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》第一百一

printed on the letter of guarantee.

Where the litigant is unable to read out the letter of guarantee with justified reason, the court clerk shall read out the letter of guarantee and provide an explanation.

Article 66 Where a party concerned refuses to be present without any justified reason, or refuses to sign or read out the letter of guarantee, or refuses to accept questioning, the people's court shall consolidate the facts of the case, and judge the veracity of the facts on which evidence is to be given . Where there is no other evidence to prove the facts on which evidence is to be given, the people's court shall rule against the litigant. Article 67 A person who is incapable of expressing his/her meaning properly may not act as a witness. If the facts on which evidence is to be given match the age, level of intelligence or mental state of a person with no or limited capacity for civil conduct, such person may act as a witness. Article 68 A people's court shall require witnesses to appear in court and testify and shall answer questions raised by judges and parties to an action. Where a witness states his/her testimony during the preparation period before trial or when both parties are present at the scene of an investigation or inquiry by the people's court, such testimony shall be deemed to be given in court. Where both parties to a case agree that a witness may give testimony in other ways and subject to the approval of the people's court, the witness is not required to testify in court.

The testimony provided in writing or otherwise by a witness who fails to appear in court without justified reasons shall not be taken as the basis for ascertaining the facts in a case.

Article 69 Where a litigant applies for a witness to testify in court, the application shall be submitted to the people's court before expiry of the duration for presentation of evidence. The written application shall specify the name, occupation, domicile, and contact information of the witness, the main content of his/her testimony, the relevance of the content of his/her testimony to the facts on which evidence is to be given, and the necessity for the

十二条的规定申请人民法院责令对方当事人提交书证的，申请书应当载明所申请提交的书证名称或者内容、需要以该书证证明的事实及事实的重要性、对方当事人控制该书证的根据以及应当提交该书证的理由。

对方当事人否认控制书证的，人民法院应当根据法律规定、习惯等因素，结合案件的事实、证据，对于书证是否在对方当事人控制之下的事实作出综合判断。

第四十六条人民法院对当事人提交书证的申请进行审查时，应当听取对方当事人的意见，必要时可以要求双方当事人提供证据、进行辩论。

当事人申请提交的书证不明确、书证对于待证事实的证明无必要、待证事实对于裁判结果无实质性影响、书证未在对方当事人控制之下或者不符合本规定第四十七条

witness to testify in court.

In a circumstance specified in Paragraph 1 of Article 96 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China, a people's court shall notify ex officio a witness to testify in court.

Article 70 Where a people's court approves an application for a witness to testify in court, it shall serve a notice on the witness and notify both parties to the lawsuit. The notice shall specify the time and place where the witnesses testify, the matters to testify, the requirements, and the legal consequences of perjury, etc. Where the matter for which a litigant applies for a witness to testify in court is unrelated to the facts on which evidence is to be given or it is not necessary to notify a witness to testify in court, the people's court shall not approve the application of the litigant. Article 71 The people's court shall require the witness to sign a letter of guarantee before testifying and shall read out the content of the letter of guarantee in court. However, this restriction does not apply to the situation where a person without civil capacity or with limited civil capacity acts as a witness. Where the witness is unable to read the letter of guarantee due to a proper reason, the court clerk shall read the letter of guarantee on behalf of the witness and provide an explanation.

Where a witness refuses to sign or read out the letter of guarantee, he/she shall not give testimony but shall bear the relevant expenses by himself/herself.

The provisions stated in the letter of guarantee by the party concerned shall apply to the content of the letter of guarantee by the witness.

Article 72 A witness shall objectively state the facts he/she is aware of firsthand, and may not give testimony in speculative, inferential or commentary language. No witness may sit in on the court hearing before giving his/ her testimony and may not give his/ her testimony by reading out written materials prepared in

情形的，人民法院不予准许。

当事人申请理由成立的，人民法院应当作出裁定，责令对方当事人提交书证；理由不成立的，通知申请人。

第四十七条下列情形，控制书证的当事人应当提交书证：

（一）控制书证的当事人在诉讼中曾经引用过的书证；

（二）为对方当事人的利益制作的书证；

（三）对方当事人依照法律规定有权查阅、获取的书证；

（四）账簿、记账原始凭证；

（五）人民法院认为应当提交书证的其他情形。

前款所列书证，涉及国家秘密、商业秘密、当事人或第三人的隐私，或者存在法律规定应当保密的情形的，提交后不得公开质证。

advance.

Where it is difficult for a witness to express himself/herself orally, he/she may testify by other means.

Article 73 A witness shall make consecutive statements regarding the matters for which he/she gives evidence. Where any party or his/her legal representative, agent ad litem or auditor interferes with the statement of the witness, the people's court shall timely stop such interference, and may impose punishment in accordance with Article 110 of the Civil Procedure Law when necessary. Article 74 The judges may question witnesses. Subject to permission by the judge, the parties to a case and their agents ad litem may question witnesses. No witness may be present when another witness is being questioned.

A people's court may, where it deems necessary, cross-examine witnesses.

Article 75 After testifying in court, a witness may apply to the people's court for paying the expenses incurred by testifying in court by the witness. Where a witness has difficulty and needs to withdraw the expenses for testifying in court in advance, the people's court may make such payment according to the application of the witness before the witness gives testimony in court. Article 76 Where a witness is unable to testify in court due to difficulties and applies to testify by way of written testimony, audio-visual transmission technique or audio-visual materials etc., the witness shall submit an application form to the people's court. The application shall clearly state the specific reasons why he/she is unable to appear in court. In a circumstance set forth in Article 73 of the Civil Procedure Law, a people's court shall grant permission. Article 77 Where a witness testifies by way of written testimony upon approval by the people's court, the witness shall sign a letter of guarantee; where the witness testifies by way of audio-visual transmission technology or audio-visual materials, the witness shall sign a letter of guarantee and read out the contents of the letter of guarantee. Article 78 Where any questioning of any

第四十八条控制书证的当事人无正当理由拒不提交书证的，人民法院可以认定对方当事人所主张的书证内容为真实。

控制书证的当事人存在《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》第一百三十三条规定情形的，人民法院可以认定对方当事人主张以该书证证明的事实为真实。

三、举证时限与证据交换第四十九条被告应当在答辩期届满前提出书面答辩，阐明其对原告诉讼请求及所依据的事实和理由的意见。第五十条人民法院应当在审理前的准备阶段向当事人送达举证通知书。

举证通知书应当载明举证责任的分配原则和要求、可以向人民法院申请调查收集证据的情形、人民法院根据案件情况指定的举证期限以及逾期提供证据的法律后果等内

witness by any party or the agent ad litem thereof is irrelevant to the facts on which evidence is to be given , or involves any threat or insult to the witness or improper guidance, the judges shall immediately stop the questioning. Where necessary, punishment may be imposed pursuant to the provisions of Article 110 and Article 111 of the Civil Procedure Law. Where a witness intentionally makes false representation, litigant participants or any other persons hinder a witness from testifying by way of violence, threat, bribery, etc., or retaliate a witness after the witness has testified by way of insult, slander, framing, intimidation, beating, etc., the people's court shall punish the actor pursuant to the provisions of Article 111 of the Civil Procedure Law and in accordance with the circumstances. Article 79 Where an expert witness testifies in court in accordance with Article 78 of the Civil Procedure Law, the people's court shall notify the expert witness of the time, place and requirements for appearance in court three days before trial. Where an agency is entrusted to give an expert opinion, the personnel engaging in the expert report shall appear in court on behalf of the agency. Article 80 An expert witness shall truthfully reply to the objections raised by the parties and the inquiries of the judges with regard to the matters subject to the expert opinion. If it is indeed difficult to give a reply in court, upon approval by the people's court, a written reply may be given after the end of the court trial. The people's court shall promptly serve the written reply on the litigants and heed the opinions of the litigants. Where necessary, cross-examination may be organized again. Article 81 Where the expert witness refuses to testify in court, his/her opinions may not be used as the basis to ascertain the facts of the case. The people's court shall suggest the relevant competent department or organization to punish the expert witness who refuses to testify in court. If the party concerned requests refund of the expert costs, the people's court shall make a ruling within three days, ordering the expert witness to refund; if the expert witness refuses to refund, the people's court shall carry out enforcement in accordance with the law.

Where a litigant applies for an expert opinion to be given anew



容。

第五十一条举证期限可以由当事人协商，并经人民法院准许。

人民法院指定举证期限的，适用第一审普通程序审理的案件不得少于十五日，当事人提供新的证据的第二审案件不得少于十日。适用简易程序审理的案件不得超过十五日，小额诉讼案件的举证期限一般不得超过七日。

举证期限届满后，当事人提供反驳证据或者对已经提供的证据的来源、形式等方面的瑕疵进行补正的，人民法院可以酌情再次确定举证期限，该期限不受前款规定的期间限制。

第五十二条当事人在举证期限内提供证据存在客观障碍，属于民事诉讼法第六十五条第二款规定的“当事人在该期限内提供证据确有困难”的情形。

前款情形，人民法院应当根据

because the expert witness refuses to testify in court, the people's court shall approve the application.

Article 82 Upon consent by the court, a litigant may question an expert witness or inspector. For the questioning of the expert witness and inspector, no menacing, insulting or other inappropriate words or means may be used. Article 83 Where a party concerned applies for a person with expertise to appear in court in accordance with Article 79 of the Civil Procedure Law and Article 122 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China, the basic information on the person with expertise and the purpose of the application shall be clearly stated in the application. Where a people's court approves the application of a litigant, both litigants shall be notified. Article 84 Judges may question persons with expertise. Upon approval by the court, litigants may question the persons with expertise, and the persons with expertise applied by the respective litigants may confront the relevant issues in the lawsuit. Persons with expertise shall not participate in court trials other than those for cross-examination of expert opinions or expressing of opinions on professional issues.

#### V. Examination and Verification of Evidence

Article 85 The people's court shall, in accordance with the law, make a judgment based on the facts of a case that can be proved by evidence. Judges shall verify evidence under applicable legal procedures in a comprehensive and objective manner, and shall, adhere to the professional ethics of judges, use logical reasoning and their experience of daily life to reach independent judgments concerning whether the evidence has probative force and the probative value of the evidence according to law, and disclose the reasons for and conclusions reached in their judgments. Article 86 With respect to the proof of a party concerned regarding a fact of fraud, coercion, malicious collusion, oral will or gift, where a people's court believes that the possibility of the existence of the said fact on which evidence is to be given is beyond reasonable doubt, it shall affirm the existence of the said fact. For facts relating

当事人的举证能力、不能在举证期限内提供证据的原因等因素综合判断。必要时，可以听取对方当事人的意见。

第五十三条诉讼过程中，当事人主张的法律关系性质或者民事行为效力与人民法院根据案件事实作出的认定不一致的，人民法院应当将法律关系性质或者民事行为效力作为焦点问题进行审理。但法律关系性质对裁判理由及结果没有影响，或者有关问题已经当事人充分辩论的除外。

存在前款情形，当事人根据法庭审理情况变更诉讼请求的，人民法院应当准许并可以根据案件的具体情况重新指定举证期限。

第五十四条当事人申请延长举证期限的，应当在举证期限届满前向人民法院提出书面申请。

申请理由成立的，人民法院应当准许，适当延长举证期限，并通

to procedural matters such as litigation preservation or abstention, where the people's court takes into account the litigant's statement and the relevant evidence to conclude that the relevant facts are highly probable, the people's court may deem that the facts are existent. Article 87 Judges may examine and assess any single piece of evidence on the basis of the following criteria: (I) Whether the evidence is the original and whether the photocopies and reproductions are consistent with the original; and

(II) Whether the evidence is relevant to the facts of the case;

(III) Whether the evidence conforms to the law in terms of form or source;

(IV) Whether the content of evidence is authentic in content; and

(V) Whether the witness or the person providing the evidence has an interest in the party.

Article 88 Judges shall comprehensively examine and assess all evidence based on the relevance of each piece of evidence to the facts of the case and the relationships between the various items of evidence submitted. Article 89 The people's court shall confirm evidence recognized by the litigants in the litigation process, except as otherwise provided by laws or judicial

interpretations. Where the party concerned reneges on the recognized evidence, Article 229 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China shall apply mutatis mutandis. Article 90 The following evidence alone may not serve as the basis for ascertaining the facts in a case: (I) Statements of the parties concerned;

(II) The testimony of any person without capacity for civil conduct or with limited capacity for civil conduct, which is not appropriate to his/her age, intelligence or mental health;

(III) The testimony of a witness that has any interest connected to



知其他当事人。延长的举证期限适用于其他当事人。

申请理由不成立的，人民法院不予准许，并通知申请人。

第五十五条存在下列情形的，举证期限按照如下方式确定：

（一）当事人依照民事诉讼法第一百二十七条规定提出管辖权异议的，举证期限中止，自驳回管辖权异议的裁定生效之日起恢复计算；

（二）追加当事人、有独立请求权的第三人参加诉讼或者无独立请求权的第三人经人民法院通知参加诉讼的，人民法院应当依照本规定第五十一条的规定为新参加诉讼的当事人确定举证期限，该举证期限适用于其他当事人；

（三）发回重审的案件，第一审人民法院可以结合案件具体情况和发回重审的原因，酌情确定举证

a party or any agent thereof;

(IV) Potentially unreliable audio-visual materials and electronic data; and

(V) Photocopies and reproductions which are impossible to be verified with the original.

Article 91 Duplicates of official document evidence prepared by the producer thereof based on the original document in part or in full shall have the same probative force as the original document. For a document placed on file in a State organ, if its reproductions, duplicates or extracts are proved to be consistent with the original in content by the archives administration or the organ that produced the original, the reproductions, duplicates or extracts shall have the same probative force as the original. Article 92 The burden of proof of the authenticity of private documentary evidence shall be borne by the party concerned who claims that the case facts are proved by private documentary evidence. Any private documentary evidence that is signed, sealed or stamped by the producer or the agent thereof shall be presumed to be authentic.

Where there is any deletion, alteration, addition or other forms of flaws in the private documentary evidence, the people's court shall take into account the specific circumstances of the case in determining the probative force of the private documentary evidence.

Article 93 The people's court shall make a comprehensive judgment on the authenticity of the electronic data in combination with the following factors: (I) Whether the hardware and software environments of the computer system on which the creation, storage and transmission of electronic data rely are complete and reliable;

(II) Whether the hardware and software environments of the computer system on which the generation, storage and transmission of electronic data rely are in normal operating

期限；

（四）当事人增加、变更诉讼请求或者提出反诉的，人民法院应当根据案件具体情况重新确定举证期限；

（五）公告送达的，举证期限自公告期届满之次日起计算。

第五十六条人民法院依照民事诉讼法第一百三十三条第四项的规定，通过组织证据交换进行审理准备的，证据交换之日举证期限届满。

证据交换的时间可以由当事人协商一致并经人民法院认可，也可以由人民法院指定。当事人申请延期举证经人民法院准许的，证据交换日相应顺延。

第五十七条证据交换应当在审判人员的主持下进行。

在证据交换的过程中，审判人员对当事人无异议的事实、证据应

conditions, or whether the generation, storage and transmission of electronic data are affected when they are not in normal operating conditions;

(III) Whether the hardware and software environments of the computer system on which the generation, storage and transmission of electronic data rely have effective monitoring and verification means to prevent errors;

(IV) Whether the electronic data are completely saved, transmitted and extracted, and whether the methods of saving, transmitting and extracting are reliable;

(V) Whether the electronic data are formed and stored in the normal current activities;

(VI) Whether the subjects saving, transmitting and extracting electronic data are appropriate; and

(VII) other factors affecting the integrity and reliability of electronic data.

A people's court may, where it deems necessary, examine and judge the veracity of the electronic data through evaluation or inspection, etc.

Article 94 Where any electronic data falls under any of the following circumstances, the people's court may confirm its authenticity, unless there is any contrary evidence sufficient to rebut: (I) The electronic data submitted or kept by the party that is unfavorable to himself/herself;

(II) The data provided or confirmed by a neutral third-party platform that records and preserves electronic data; or

(III) The data that have been formed in normal business activities;

(IV) The data that are kept by way of archive management; or

(V) The data that are preserved, transmitted or extracted in a

当记录在卷；对有异议的证据，按照需要证明的事实分类记录在卷，并记载异议的理由。通过证据交换，确定双方当事人争议的主要问题。

第五十八条当事人收到对方的证据后有反驳证据需要提交的，人民法院应当再次组织证据交换。第五十九条人民法院对逾期提供证据的当事人处以罚款的，可以结合当事人逾期提供证据的主观过错程度、导致诉讼迟延的情况、诉讼标的金额等因素，确定罚款数额。

四、质证第六十条当事人在审理前的准备阶段或者人民法院调查、询问过程中发表过质证意见的证据，视为质证过的证据。

当事人要求以书面方式发表质证意见，人民法院在听取对方当事人意见后认为有必要的，可以准许。人民法院应当及时将书面质证意见送交对方当事人。

第六十一条对书证、物证、视

manner agreed upon by the parties.

Where the contents of electronic data have been notarized by a notary organization, the people's court shall confirm their veracity, unless there is evidence to the contrary to invalidate the contents.

Article 95 Where a party concerned controls evidence but refuses to submit it without any justified reasons, and the party concerned which bears the burden of proof for the fact on which evidence is to be given argues that such evidence is unfavorable to the controller, the people's court may affirm such argument. Article 96 In assessing the testimony of a witness, the people's court may make its assessment on the basis of a comprehensive analysis of the intelligence, moral character, knowledge, experience, legal awareness, professional ability, etc., of the witness concerned. Article 97 The people's court shall specify in its judgment the reasons why a piece of evidence has or has not been accepted. The reasons why any piece of evidence to which the parties to the case have no objection have been accepted need not be specified in the judgment document.

#### VI. Miscellaneous

Article 98 The lawful rights and interests of witnesses, expert witnesses and inspectors shall be protected in accordance with law. Where a litigant or any other participant in the proceedings forges or destroys evidence, provides false evidence, prevents a witness from testifying, instigates, bribes or coerces others to commit perjury, or attacks or takes revenge against a witness, expert witness or inspector, punishment shall be imposed pursuant to the provisions of Article 110 and Article 111 of the Civil Procedure Law. Article 99 If there is no provision on evidence preservation in these Provisions, the provisions of laws and judicial interpretations on property preservation shall apply mutatis mutandis. Unless otherwise stipulated by laws and judicial interpretations, the provisions of these Provisions on questioning of witnesses shall apply mutatis mutandis to questioning of litigants, expert witnesses or persons with expertise; the provisions on

听资料进行质证时，当事人应当出示证据的原件或者原物。但有下列情形之一的除外：

（一）出示原件或者原物确有困难并经人民法院准许出示复制件或者复制品的；

（二）原件或者原物已不存在，但有证据证明复制件、复制品与原件或者原物一致的。

第六十二条质证一般按下列顺序进行：

（一）原告出示证据，被告、第三人与原告进行质证；

（二）被告出示证据，原告、第三人与被告进行质证；

（三）第三人出示证据，原告、被告与第三人进行质证。

人民法院根据当事人申请调查收集的证据，审判人员对调查收集证据的情况进行说明后，由提出申请的当事人与对方当事人、第三人

documentary evidence shall apply to audio-visual materials and electronic data; the provisions on electronic data shall apply to audio-visual materials stored in electronic media such as computers. Article 100 These Provisions shall come into force as of May 1, 2020. Upon promulgation and implementation of these Provisions, where there is any discrepancy between these Provisions and the judicial interpretations previously promulgated by the Supreme People's Court, such judicial interpretations shall no longer apply.

进行质证。

人民法院依职权调查收集的证据，由审判人员对调查收集证据的情况进行说明后，听取当事人的意见。

第六十三条当事人应当就案件事实作真实、完整的陈述。

当事人的陈述与此前陈述不一致的，人民法院应当责令其说明理由，并结合当事人的诉讼能力、证据和案件具体情况进行审查认定。

当事人故意作虚假陈述妨碍人民法院审理的，人民法院应当根据情节，依照民事诉讼法第一百一十一条的规定进行处罚。

第六十四条人民法院认为有必要的，可以要求当事人本人到场，就案件的有关事实接受询问。

人民法院要求当事人到场接受询问的，应当通知当事人询问的时间、地点、拒不到场的后果等内

容。

第六十五条人民法院应当在询问前责令当事人签署保证书并宣读保证书的内容。

保证书应当载明保证据实陈述，绝无隐瞒、歪曲、增减，如有虚假陈述应当接受处罚等内容。当事人应当在保证书上签名、捺印。

当事人有正当理由不能宣读保证书的，由书记员宣读并进行说明。

第六十六条当事人无正当理由拒不到场、拒不签署或宣读保证书或者拒不接受询问的，人民法院应当综合案件情况，判断待证事实的真伪。待证事实无其他证据证明的，人民法院应当作出不利于该当事人的认定。第六十七条不能正确表达意思的人，不能作为证人。

待证事实与其年龄、智力状况或者精神健康状况相适应的无民事行为能力人和限制民事行为能力

人，可以作为证人。

第六十八条人民法院应当要求证人出庭作证，接受审判人员和当事人的询问。证人在审理前的准备阶段或者人民法院调查、询问等双方当事人当场陈述证言的，视为出庭作证。

双方当事人同意证人以其他方式作证并经人民法院准许的，证人可以不出庭作证。

无正当理由未出庭的证人以书面等方式提供的证言，不得作为认定案件事实的根据。

第六十九条当事人申请证人出庭作证的，应当在举证期限届满前向人民法院提交申请书。

申请书应当载明证人的姓名、职业、住所、联系方式，作证的主要内容，作证内容与待证事实的关联性，以及证人出庭作证的必要性。



符合《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》第九十六条第一款规定情形的，人民法院应当依职权通知证人出庭作证。

第七十条人民法院准许证人出庭作证申请的，应当向证人送达通知书并告知双方当事人。通知书中应当载明证人作证的时间、地点，作证的事项、要求以及作伪证的法律后果等内容。

当事人申请证人出庭作证的事项与待证事实无关，或者没有通知证人出庭作证必要的，人民法院不予准许当事人的申请。

第七十一条人民法院应当要求证人在作证之前签署保证书，并在法庭上宣读保证书的内容。但无民事行为能力人和限制民事行为能力人作为证人的除外。

证人确有正当理由不能宣读保证书的，由书记员代为宣读并进行

说明。

证人拒绝签署或者宣读保证书的，不得作证，并自行承担相关费用。

证人保证书的内容适用当事人保证书的规定。

第七十二条证人应当客观陈述其亲身感知的事实，作证时不得使用猜测、推断或者评论性语言。

证人作证前不得旁听法庭审理，作证时不得以宣读事先准备的书面材料的方式陈述证言。

证人言辞表达有障碍的，可以通过其他表达方式作证。

第七十三条证人应当就其作证的事项进行连续陈述。

当事人及其法定代理人、诉讼代理人或者旁听人员干扰证人陈述的，人民法院应当及时制止，必要时可以依照民事诉讼法第一百一十

条的规定进行处罚。

第七十四条审判人员可以对证人进行询问。当事人及其诉讼代理人经审判人员许可后可以询问证人。

询问证人时其他证人不得在场。

人民法院认为有必要的，可以要求证人之间进行对质。

第七十五条证人出庭作证后，可以向人民法院申请支付证人出庭作证费用。证人有困难需要预先支出庭作证费用的，人民法院可以根据证人的申请在出庭作证前支付。第七十六条证人确有困难不能出庭作证，申请以书面证言、视听传输技术或者视听资料等方式作证的，应当向人民法院提交申请书。申请书中应当载明不能出庭的具体原因。

符合民事诉讼法第七十三条规

定情形的，人民法院应当准许。

第七十七条证人经人民法院准许，以书面证言方式作证的，应当签署保证书；以视听传输技术或者视听资料方式作证的，应当签署保证书并宣读保证书的内容。第七十八条当事人及其诉讼代理人对证人的询问与待证事实无关，或者存在威胁、侮辱证人或不当引导等情形的，审判人员应当及时制止。必要时可以依照民事诉讼法第一百一十条、第一百一十一条的规定进行处罚。

证人故意作虚假陈述，诉讼参与人或者其他人以暴力、威胁、贿赂等方法妨碍证人作证，或者在证人作证后以侮辱、诽谤、诬陷、恐吓、殴打等方式对证人打击报复的，人民法院应当根据情节，依照民事诉讼法第一百一十一条的规定，对行为人进行处罚。

第七十九条鉴定人依照民事诉讼法第七十八条的规定出庭作证

的，人民法院应当在开庭审理三日前将出庭的时间、地点及要求通知鉴定人。

委托机构鉴定的，应当由从事鉴定的人员代表机构出庭。

第八十条鉴定人应当就鉴定事项如实答复当事人的异议和审判人员的询问。当庭答复确有困难的，经人民法院准许，可以在庭审结束后书面答复。

人民法院应当及时将书面答复送交当事人，并听取当事人的意见。必要时，可以再次组织质证。

第八十一条鉴定人拒不出庭作证的，鉴定意见不得作为认定案件事实的根据。人民法院应当建议有关主管部门或者组织对拒不出庭作证的鉴定人予以处罚。

当事人要求退还鉴定费用的，人民法院应当在三日内作出裁定，责令鉴定人退还；拒不退还的，由

人民法院依法执行。

当事人因鉴定人拒不出庭作证  
申请重新鉴定的，人民法院应当准  
许。

第八十二条经法庭许可，当事  
人可以询问鉴定人、勘验人。

询问鉴定人、勘验人不得使用  
威胁、侮辱等不适当的言语和方  
式。

第八十三条当事人依照民事诉  
讼法第七十九条和《最高人民法院  
关于适用〈中华人民共和国民事诉讼法〉的解释》第一百二十二条的  
规定，申请有专门知识的人出庭  
的，申请书中应当载明有专门知识  
的人的基本情况和申请的目的。

人民法院准许当事人申请的，  
应当通知双方当事人。

第八十四条审判人员可以对有  
专门知识的人进行询问。经法庭准  
许，当事人可以对有专门知识的人

进行询问，当事人各自申请的有专门知识的人可以就案件中的有关问题进行对质。

有专门知识的人不得参与对鉴定意见质证或者就专业问题发表意见之外的法庭审理活动。

五、证据的审核认定第八十五条人民法院应当以证据能够证明的案件事实为根据依法作出裁判。

审判人员应当依照法定程序，全面、客观地审核证据，依据法律的规定，遵循法官职业道德，运用逻辑推理和日常生活经验，对证据有无证明力和证明力大小独立进行判断，并公开判断的理由和结果。

第八十六条当事人对于欺诈、胁迫、恶意串通事实的证明，以及对于口头遗嘱或赠与事实的证明，人民法院确信该待证事实存在的可能性能够排除合理怀疑的，应当认定该事实存在。

与诉讼保全、回避等程序事项



有关的事实，人民法院结合当事人的说明及相关证据，认为有关事实存在的可能性较大的，可以认定该事实存在。

第八十七条审判人员对单一证据可以从下列方面进行审核认定：

（一）证据是否为原件、原物，复制件、复制品与原件、原物是否相符；

（二）证据与本案事实是否相关；

（三）证据的形式、来源是否符合法律规定；

（四）证据的内容是否真实；

（五）证人或者提供证据的人与当事人有无利害关系。

第八十八条审判人员对案件的全部证据，应当从各证据与案件事实的关联程度、各证据之间的联系等方面进行综合审查判断。第八十九条当事人在诉讼过程中认可的证

据，人民法院应当予以确认。但法律、司法解释另有规定的除外。

当事人对认可的证据反悔的，参照《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》第二百二十九条的规定处理。

第九十条下列证据不能单独作为认定案件事实的根据：

（一）当事人的陈述；

（二）无民事行为能力人或者限制民事行为能力人所作的与其年龄、智力状况或者精神健康状况不相称的证言；

（三）与一方当事人或者其代理人有利害关系的证人陈述的证言；

（四）存有疑点的视听资料、电子数据；

（五）无法与原件、原物核对的复制件、复制品。

第九十一条公文书证的制作人根据文书原件制作的载有部分或者全部内容的副本，与正本具有相同的证明力。

在国家机关存档的文件，其复制件、副本、节录本经档案部门或者制作原本的机关证明其内容与原本一致的，该复制件、副本、节录本具有与原本相同的证明力。

第九十二条私文书证的真实性，由主张以私文书证证明案件事实的当事人承担举证责任。

私文书证由制作人或者其代理人签名、盖章或捺印的，推定为真实。

私文书证上有删除、涂改、增添或者其他形式瑕疵的，人民法院应当综合案件的具体情况判断其证明力。

第九十三条人民法院对于电子数据的真实性，应当结合下列因素

综合判断：

（一）电子数据的生成、存储、传输所依赖的计算机系统的硬件、软件环境是否完整、可靠；

（二）电子数据的生成、存储、传输所依赖的计算机系统的硬件、软件环境是否处于正常运行状态，或者不处于正常运行状态时对电子数据的生成、存储、传输是否有影响；

（三）电子数据的生成、存储、传输所依赖的计算机系统的硬件、软件环境是否具备有效的防止出错的监测、核查手段；

（四）电子数据是否被完整地保存、传输、提取，保存、传输、提取的方法是否可靠；

（五）电子数据是否在正常的往来活动中形成和存储；

（六）保存、传输、提取电子数据的主体是否适当；

（七）影响电子数据完整性和可靠性的其他因素。

人民法院认为有必要的，可以通过鉴定或者勘验等方法，审查判断电子数据的真实性。

第九十四条电子数据存在下列情形的，人民法院可以确认其真实性，但有足以反驳的相反证据的除外：

（一）由当事人提交或者保管的于己不利的电子数据；

（二）由记录和保存电子数据的中立第三方平台提供或者确认的；

（三）在正常业务活动中形成的；

（四）以档案管理方式保管的；

（五）以当事人约定的方式保存、传输、提取的。

电子数据的内容经公证机关公证的，人民法院应当确认其真实性，但有相反证据足以推翻的除外。

第九十五条一方当事人控制证据无正当理由拒不提交，对待证事实负有举证责任的当事人主张该证据的内容不利于控制人的，人民法院可以认定该主张成立。第九十六条人民法院认定证人证言，可以通过对证人的智力状况、品德、知识、经验、法律意识和专业技能等的综合分析作出判断。第九十七条人民法院应当在裁判文书中阐明证据是否采纳的理由。

对当事人无争议的证据，是否采纳的理由可以不在裁判文书中表述。

六、其他第九十八条对证人、鉴定人、勘验人的合法权益依法予以保护。

当事人或者其他诉讼参与人伪

造、毁灭证据，提供虚假证据，阻止证人作证，指使、贿买、胁迫他人作伪证，或者对证人、鉴定人、勘验人打击报复的，依照民事诉讼法第一百一十条、第一百一十一条的规定进行处罚。

第九十九条本规定对证据保全没有规定的，参照适用法律、司法解释关于财产保全的规定。

除法律、司法解释另有规定外，对当事人、鉴定人、有专门知识的人的询问参照适用本规定中关于询问证人的规定；关于书证的规定适用于视听资料、电子数据；存储在电子计算机等电子介质中的视听资料，适用电子数据的规定。

第一百条本规定自 2020 年 5 月 1 日起施行。

本规定公布施行后，最高人民法院以前发布的司法解释与本规定不一致的，不再适用。



最高人民法院关于民事诉讼证据的若干规定（2019 修正）

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扫一扫，手机阅读更方便

# **Exhibit B-10**

**Understanding and Application of Article 47 of the Provisions of the Supreme People's Court on Evidence in Civil Litigation (2019 Amendment)**

[Translation omitted]

**I. Scope of the Obligation to Produce Documentary Evidence**

Generally, a party has no obligation to submit evidence harmful to its interests or to assist the opposing party in evidence production.

[Translation omitted]

Traditionally, many jurisdictions have adopted a restrictive approach regarding the scope of the obligation to produce documentary evidence. This approach confines the obligation to produce documentary evidence within specific boundaries, aiming to strike a balance between protecting the interests of the documentary evidence controller and finding the fact. Under this framework, the party bearing the burden of proof may access and utilize documentary evidence controlled by the opposing party—without compromising the legitimate interests of the documentary evidence controller.

[Translation omitted]

(2) Order for Document Production is an extremely exceptional measure in civil litigation, so that it requires very strict limitations on its application. Particularly for circumstances beyond the first four items specified in this Article, its implementation demands gradual exploration through judicial practice.

[Translation omitted]

## 最高人民法院关于民事诉讼证据的若干规定（2019 修正）第四十七条释义

### 正文

第四十七条 [“书证提出命令”的客体范围] 下列情形，控制书证的当事人应当提交书证：

- （一）控制书证的当事人在诉讼中曾经引用过的书证；
- （二）为对方当事人的利益制作的书证；
- （三）对方当事人依照法律规定有权查阅、获取的书证；
- （四）账簿、记账原始凭证；
- （五）人民法院认为应当提交书证的其他情形。

前款所列书证，涉及国家秘密、商业秘密、当事人或第三人的隐私，或者存在法律规定应当保密的情形的，提交后不得公开质证。

### 【条文主旨】

本条系新增条文，是关于“书证提出命令”客体范围的规定。是对《民事诉讼法解释》第一百一十二条、第一百一十三条的完善和补充。

### 【条文释义】

“书证提出命令”的客体是书证，“书证提出命令”客体范围即是负有举证责任的当事人可以申请对方当事人提出的书证范围，实质上是控制书证的当事人负有书证提出义务的范围。客体范围是“书证提出命令”的核心条件，只有客体范围内的书证，才能成为“书证提出命令”的对象，当事人才能提出申请。本规定第四十五条第一款关于“书证提出命令”申请书内容的规定中，“应当提交该书证的理由”即指向本条规定的“书证提出命令”的客体范围。《民事诉讼法解

释》第一百一十二条只规定了“书证提出命令”的主体范围，对客体范围未涉及，本条规定是对《民事诉讼法解释》第一百一十二条、第一百一十三条规定的完善和补充。

### 一、书证提出义务的范围

一般而言，当事人对于于己不利的证据没有提交的义务，也不负有协助对方

当事人举证的义务。但民事诉讼中发现真实的案件事实，不仅涉及当事人之间私权的保护，有时也关系到司法权的正确行使、社会公共利益的保护和公平正义的实现。特别是证据偏在场合，如果不能采取适当的措施进行干预，所谓武器平等、诉讼权利保护和实质正义的实现势必遭受极大损害，影响司法的公信力。因此，各国普遍在立法上对不负举证责任的当事人课以在一定条件下，提交其控制的书证的义务。这种义务，即为书证提出义务。这种义务并非当事人之间基于私法关系而产生，是当事人对代表国家行使审判权的法院所负有的证据协力义务，是诉讼法上的义务，性质为公法上的义务。

当事人的文书提出义务从历史沿革上可以追溯至罗马法。“在罗马法，为期诉讼之正当进行，无论何人执有文书，以其不受损害为限，皆有将其所执文书提出于法院的义务”至“德国普通法时代，……执有文书之当事人对举证人仅负私法上的文书返还义务，也即举证人只有在基于所有权或债权对执有文书之当事人享有文书返还请求权之情形下，始可利用该文书为证据方法”。<sup>[1]</sup>现代社会，大陆法系国家和地区基于不同的历史传统和价值观念，对于当事人的文书提出义务也作出不同的制度安排。德国民事诉讼中的文书提出义务明确限制在民法、商法等明确规定的情形。文书提出义务在诉讼法上仅适用于该文书为不负证明责任的当事人曾经在诉讼中引用过。随着现代性诉讼的增加，德国对于当事人文书提出义务的范围虽有所扩大，但主要是通过对实体法请求权适用的扩张解释来实现的，而非诉讼法上抽象地授权举证人请求文书持有人提出其持有的文书。而日本和我国台湾地区则在德国的基础上，对于文书提出义务作了一般化的扩张。在

日本，除了依据实体法的规定应当提出以及引用过的文书之外，没有明确不得提出的情形即属于可以提出文书的范围。我国台湾地区“民事诉讼法”则将文书提出义务扩张，“与本案诉讼有关的事项所制作的文书”都包含在提出义务的范围。

[2]

传统上各国对于书证提出义务的范围，采取限定主义，即将书证提出义务限制在特定范围之内，以寻求书证控制人的利益保护与发现真实之间的平衡，在不损害书证控制人利益的前提下，使负有举证责任的当事人能够获得、使用对方控

制的书证。本条第一款关于书证提出义务范围的规定，参考了我国台湾地区和日本的立法例，并根据我国民事诉讼的实际情况进行适当调整，以期能够更好地适应我国民事诉讼实践。

根据本条第一款规定，控制书证的当事人有义务提交的书证，包括：

#### （一）引用文书

控制书证的当事人在诉讼中曾经引用过的书证，即引用文书。控制书证的当事人在诉讼中引用过书证，意味着其愿意将该书证公开，且其引用该书证本身意味着有利用、公开该书证的积极意愿，因此，负有举证责任的当事人有权要求控制人提交该书证。即使书证控制人在引用该书证后撤销或者放弃使用该书证，其书证提出义务也不能免除。如果书证控制人只引用书证的一部分，控制书证的当事人是否应当提交书证的全部内容？有观点认为，应当提出的仅指引用的部分，没有具体引用的部分应当除外。[3]我们不赞同这种观点，理由在于，对书证的审查应当考虑书证的完整性，仅抽取其中部分内容，无法判断该部分书证内容的真实性。故当事人引用书证部分内容的，仍然有义务将完整的书证提出。就引用书证的主体而言，系指控制书证的当事人，既包括原告、被告，也包括具有原告地位的有独立请求权第三人以及被告型无独立请求权第三人。但辅助型第三人不在此限。

## （二）利益文书

为对方当事人的利益制作的书证，即利益文书。此处的对方当事人是指负有举证责任的当事人。为负有举证责任的当事人利益制作的书证，未必留存在该当事人之手，由对方当事人控制时，则属于应当提出的书证。此处的利益不仅指负有举证责任的当事人的利益，也包括负有举证责任的当事人与其他人拥有共同利益的情形，即只要包括负有举证责任的当事人的利益即可。书证是否属于为负有举证责任的当事人利益而制作，可以从主客观两个方面考虑。如果该书证能够在客观上直接证明负有举证责任当事人的法律地位、权利，或者该书证本身即是为证明负有举证责任当事人的法律地位、权利而制作，则该书证即属于所谓利益文书的范畴。如还款承诺，遗嘱，均属于此类书证。在主观方面，可以从制作书证的目的、动机等主观因素出发，结合当事人诉讼请求所需保护的利益进行综合判断。

## （三）权利文书

对方当事人依照法律规定有权查阅、获取的书证即权利文书，是指负有举证责任当事人依照实体法的规定有权要求书证控制人交出或者查阅的书证权利文书作为书证提出义务的范围，源于实体法上的理由。其既可以基于实体法的规定，如公司法关于股东知情权的规定作出判断，也可以基于实体法上的请求权而发生，如委托人要求受托人交付其保管的文书。

## （四）账簿、记账原始凭证

在正常的经济往来中，商业账簿、记账凭证等财务资料能够比较准确地反映出交易的主要过程，或者能够从中推定交易情况，具有较强的证明作用。我国台湾地区“民事诉讼法”第三百四十四条即将商业账簿纳入文书提出义务的范畴。就账簿及记账原始凭证在“书证提出命令”客体范围中的类型，我们倾向于其属于法律关系文书。法律关系文书是指基于负有举证责任当事人与证据控制人之间



的法律关系而制作的文书,这种文书作为证据与争议的法律关系事实具有直接关联,对于证明案件事实具有重要意义。从书证内容来看,法律关系文书记载负有举证责任当事人与证据控制人之间的法律关系及相关事项从证明作用角度考察,该书证能够直接或者间接证明法律关系存在与否。<sup>[4]</sup>民事诉讼实践中,法律关系文书与利益文书往往存在交叉。日本《民事诉讼法》第 220 条对于文书提出义务的范围就将利益文书和法律关系文书置于同一条款,在第 3 项作出“文书基于举证人的利益或举证人与文书持有人之间的法律关系作成”的规定。就账簿及记账原始凭证而言,多数情况下,归于法律关系文书似更适当。

#### (五) 其他情形

人民法院认为应当提交书证的其他情形,属于兜底性条款,由人民法院在具体地案件审理中根据具体情况斟酌确定。从本条第一款的内容可知,本规定关于书证提出义务的范围,与大陆法系国家和地区立法上的规定存在一定差异。这种差异体现在,本规定对于书证提出义务并未遵循严格的限定主义,而是设置了兜底性条款,由人民法院酌定情形适用,但同时也未采取书证提出义务一般化的立场。所谓书证提出义务的一般化,是将书证控制人提出书证的义务扩展到如同任何人都有出庭作证义务一样,<sup>[5]</sup>只要该书证与案件有关联,书证控制人即有向法院提出的义务。如日本《民事诉讼法》在第 220 条第 4 项规定了五种例外情形,并明确不属于例外情形的均属于文书提出义务范围。我国台湾地区“民事诉讼法”第三百四十四条第一款第五项规定了“就与本件诉讼有关之事项所作者”。有学者认为,“自立法理由观之,……系因应今后社会之新需求,改善不公平之证据独占现象,致力弥补德国等大陆法系搜证手段不够完备之缺失,以贯彻当事人间武器平等原则…实质上已将文书提出义务一般化”。书证提出义务的一般化,对于贯彻当事人诉讼资料的平等使用、揭示案件事实真相,解决现代性诉讼、危险领域中证据偏在的问题具有积极作用。但同时也应当看到,书证提出义务一般化在大陆法系国家和地区有其特定的制度背景和社会背景,亦与其诉讼体制和

诉讼模式密切相关。大陆法系国家和地区采取当事人主义诉讼模式，施行较为彻底的辩论原则，法院在诉讼中处于消极、中立地位，将提出证据的责任尽量归于当事人是合理且公平的。在这种情况下，文书提出义务的一般化只是在解决现代性诉讼中证据偏在、武器不平等的特殊情况所采取的措施。“即使是日本法上文书提出义务的一般化，也同样有明确的条件限制”。<sup>[6]</sup>在我国台湾地区，亦有学者认为，“若绝对性地承认一般性的文书提出义务，且于其违反课与处罚效果，则将可能使诉讼沦为相互纠举相对人违反文书义务之证明，而于积极性实体要件证据之提出反而变成次要；诉讼程序乃成为诚实要求绝对化及相对应处罚之程序，其有无违反人性及是否以程序害实体，非无疑虑”，故对于台湾地区“民事诉讼法”第三百四十四条第一款第五项规定，“其适用应采限缩解释，例如尽量适用于有危险领域及证据偏在之情形，且依诚信原则对于非负举证责任一造当事人无过苛之期待者，始适用此一条文，较为妥当”。<sup>[7]</sup>

本次修改《证据规定》过程中，关于书证提出义务的范围，曾有方案系参照我国台湾地区“民事诉讼法”第三百四十四条，在第一款规定了“就与本案争议有关的事项所制作的书证”，作为本条第五项，以此作为书证提出义务一般化的规则。但经慎重考虑，我们最终删除该内容，改为“人民法院认为应当提交书证的其他情形”。主要理由在于：（1）我国诉讼体制和诉讼模式与大陆法系国家和地区存在很大不同。尽管我国民事诉讼从二十世纪八十年代就开始从职权主义诉讼体制向当事人主义诉讼体制转型，但至今这种转型尚未完成，作为当事人主义诉讼模式基础的辩论原则和处分原则在实践中并未得到充分贯彻，对于举证责任承担以及后果的认识在民事诉讼实践中不够充分、坚决。这种情况下采取书证提出义务一般化的做法，可能“诉讼沦为相互纠举相对人违反文书义务之证明”，妨碍民事诉讼审理的集中化；更可能使负有举证责任的当事人基于对书证提出义务的依赖而放弃对书证的积极收集，从而“回归到义务泛化的职权主义老路”。<sup>[8]</sup>（2）基于书证提出义务，由法院命令提出书证在民事诉讼中属于极为例

外的情形，需要严格限制其适用，特别是对于本条前四项之外的情形，更需要在审判实践中逐步探索。

## 二、涉及秘密证据的处理

书证提出义务的履行，实质上是个人利益对公法义务的让步，因此，应当设置必要的措施平衡这种冲突的利益关系，特别是在书证提出义务的履行可能导致公共利益、个人隐私、特殊信赖关系等方面利益上的损害时更是如此。这种利益上的损害多体现为特定保密义务的违反，因此，大陆法系国家和地区普遍对文书提出命令中有关秘密的保护作出规定。如日本《民事诉讼法》第 220 条规定的除外情形，即属于基于亲属关系、监护关系、职业关系、职务行为等获知的涉及秘密及个人隐私的文书，文书持有人有拒绝提出的权利。我国台湾地区“民事诉讼法”第三百四十四条第二款也规定，“前项第五款之文书内容，涉及当事人或第三人之隐私或业务秘密，如予公开，有致该当事人或第三人受重大损害之虞者，当事人得拒绝提出。但法院为判断其有无拒绝提出之正当理由，必要时，得命其提出，并以不公开方式行之”。与证人拒绝作证的权利相似，大陆法系国家和地区对于涉及秘密的证据，文书持有人有拒绝提出的权利。当然，法院只有在阅读有关文书后才能判断其是否属于涉及秘密、可以不提出的文书，因此，有关文书仍然应当提交给法院审查判断。

本条第二款涉及秘密证据的处理，与大陆法系国家和地区的做法不同，并未规定书证控制人拒绝提出的权利。在本次修改《证据规定》过程中，本条第二款曾经拟规定“涉及国家秘密、商业秘密、当事人或者第三人的隐私，且公开书证可能造成当事人或者第三人重大损害的，控制书证的当事人可以不提交。人民法院认为确有必要的，可以责令当事人提交书证，以不公开的方式审核”，即与我国台湾地区的做法相似。但在讨论过程中，多数人认为，我国立法上并未承认证人拒绝作证的权利，证据涉及秘密不能成为拒绝提供的理由；涉及秘密的证据在质证时以不公开方式进行，《民事诉讼法》对此有明确规定，可以保障当事人在

质证过程中秘密不被诉讼外他人获知；法律关于保密的规定，能够约束当事人不将秘密泄露，诉讼中人民法院也应当要求当事人遵守保密的义务；关于秘密证据质证，《民事诉讼法》有明确规定，本规定应当与其保持一致。

# **Exhibit B-11**

# 国家统一法律职业资格考试实施办法

发 文 机 关 ： 司法部	Promulgated by:	Ministry of Justice
发 布 日 期 ： 2018.04.28	Promulgation Date:	2018.04.28
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时 效 性 ： 现行有效	Validity Status:	valid
文 号 ： 司法部令第 140 号	Document No.:	Decree No. 140 of the Ministry of Justice

## 国家统一法律职业资格考试实施办法

司法部令第 140 号

《国家统一法律职业资格考试实施办法》已经 2018 年 4 月 25 日司法部部务会议审议通过，现予公布，自公布之日起施行。

部长 傅政华

2018 年 4 月 28 日

## 国家统一法律职业资格考试实施办法

(2018 年 4 月 28 日司法部令第 140 号公布)

## Implementing Measures for the National Unified Legal Profession Qualification Examination

Decree No. 140 of the Ministry of Justice

The Implementing Measures for the National Unified Legal Profession Qualification Examination, adopted upon deliberation at the executive meeting of the Ministry of Justice on April 25, 2018, are hereby promulgated, effective as of the date of promulgation.

Minister Fu Zhenghua

April 28, 2018

## Implementing Measures for the National Unified Legal Profession Qualification Examination

(Adopted on April 28, 2018 via Decree No. 140 of the Ministry of Justice)

## 第一章 总 则

## Chapter I General Provisions

## 国家统一法律职业资格考试实施办法

**第一条** 为了规范国家统一法律职业资格考试工作, 根据《中华人民共和国法官法》《中华人民共和国检察官法》《中华人民共和国公务员法》《中华人民共和国律师法》《中华人民共和国公证法》《中华人民共和国仲裁法》《中华人民共和国行政复议法》《中华人民共和国行政处罚法》和国家有关规定, 制定本办法。

**Article 1** These Measures are enacted in accordance with the Judges Law of the People's Republic of China, the Public Procurators Law of the People's Republic of China, the Law of the People's Republic of China on Public Servants, the Law of the People's Republic of China on Lawyers, the Notarization of the People's Republic of China, the Arbitration Law of the People's Republic of China, the Law of the People's Republic of China on Administrative Reconsideration, the Law of the People's Republic of China on Administrative Penalty and other relevant provisions of the State to standardize the national unified legal profession qualification examination.

**第二条** 国家统一法律职业资格考试是国家统一组织的选拔合格法律职业人才的国家考试。

**Article 2** The national unified legal profession qualification examination is a national examination organized by the State on a unified basis to select qualified legal professionals. Newly appointed judges, newly appointed procurators, persons who apply for practice as lawyers or notaries, or newly appointed legal arbitrators, as well as the newly appointed public servants in administrative authorities to be engaged in review of administrative penalty decisions, administrative reconsideration, administrative rulings or legal counselors shall pass the national unified legal profession qualification examination to be qualified as legal professionals, unless otherwise specified in laws and administrative regulations.

初任法官、初任检察官, 申请律师执业、公证员执业和初次担任法律类仲裁员, 以及行政机关中初次从事行政处罚决定审核、行政复议、行政裁决、法律顾问的公务员, 应当通过国家统一法律职业资格考试, 取得法律职业资格。

法律、行政法规另有规定的除外。

**Article 3** The national unified legal profession qualification

**第三条** 国家统一法律职业资



## 国家统一法律职业资格考试实施办法

格考试应当依法、公平、公正。

**examination shall be conducted in a lawful, fair and impartial basis.**

**第四条** 司法部会同最高人民法院、最高人民检察院等有关部门、单位组成国家统一法律职业资格考试协调委员会，就国家统一法律职业资格考试的重大事项进行协商。

**Article 4** The Ministry of Justice shall, in concert with the Supreme People's Court, the Supreme People's Procuratorate and other relevant authorities and organizations, set up the Coordination Committee for the national unified legal profession qualification examination to consult with each other on major matters in respect of the national unified legal profession qualification examination.

**第五条** 国家统一法律职业资格考试的实施工作应当接受监察机关、保密机关和社会监督。

**Article 5** The implementation of the national unified legal profession qualification examination shall be supervised by supervisory authorities, secrecy authorities and the public.

## 第二章 考试组织

## Chapter II Arrangement for the Examination

**第六条** 国家统一法律职业资格考试由司法部负责实施。

**Article 6** The Ministry of Justice is responsible for carrying out the national unified legal profession qualification examination.

**第七条** 省、自治区、直辖市司法行政机关应当明确专门机构，按照有关规定承办国家统一法律职业资格考试的考务等工作。

**Article 7** Judicial administrative authorities of various provinces, autonomous regions and centrally-administered municipalities shall designate special organizations to arrange for the affairs of the national unified legal profession qualification examination as required. Judicial administrative authorities of cities with districts designated or of districts (counties) of centrally-administered municipalities shall arrange for the affairs of the national unified legal profession qualification examination within their respective jurisdictions, as supervised and guided by their superior judicial administrative authorities.

设区的市级或者直辖市的区(县)司法行政机关，应当在上级司法行政机关的监督指导下，承担本辖区内的国家统一法律职业资格考试

试的考务等工作。

**第八条** 负责考试组织实施的司法行政机关及其考试工作人员应当严格遵守国家保密法律法规的规定，加强国家统一法律职业资格考试保密管理。

**Article 8** A judicial administrative authority responsible for arranging for and implementing the examination and its examination staff shall fully comply with secrecy laws and regulations of the State to strengthen secrecy management of the national unified legal profession qualification examination.

### 第三章 报名条件

### Chapter III Applicant Criteria

**第九条** 符合以下条件的人员，可以报名参加国家统一法律职业资格考试：

（一）具有中华人民共和国国籍；

（二）拥护中华人民共和国宪法，享有选举权和被选举权；

（三）具有良好的政治、业务素质 and 道德品行；

（四）具有完全民事行为能力；

（五）具备全日制普通高等学校法学类本科学历并获得学士及以上学位；全日制普通高等学校非法学类本科及以上学历，并获得法律硕

**Article 9** A person who meets the following criteria may apply for taking the national unified legal profession qualification examination: (1) He/she is a national of the People's Republic of China;

(2) He/she is in support of the Constitution of the People's Republic of China and has the right to vote and the right to be elected;

(3) He/she has good political and professional qualities and follows certain moral code;

(4) He/she has full capacity for civil conduct; and

(5) He/she has obtained a bachelor degree or above as a legal major from a full-time regular institution for higher education; or He/she has obtained a bachelor degree or above as a non-legal major from a full-time regular institution for higher education, and holds a Juris Master or Master of Laws degree or above; or he/she has been engaging in legal work for at least three full years after obtaining a bachelor degree or above as a non-legal major from a full-time regular institution for higher education.

士、法学硕士及以上学位;全日制普通高等学校非法学类本科及以上学历并获得相应学位且从事法律工作满三年。

**第十条** 有下列情形之一的  
人员,不得报名参加国家统一法律职业资格考试:

(一)因故意犯罪受过刑事处罚的;

(二)曾被开除公职或者曾被吊销律师执业证书、公证员执业证书的;

(三)被吊销法律职业资格证书的;

(四)被给予二年内不得报名参加国家统一法律职业资格考试(国家司法考试)处理期限未满或者被给予终身不得报名参加国家统一法律职业资格考试(国家司法考试)处理的;

(五)因严重失信行为被国家有关单位确定为失信联合惩戒对象并

**Article 10** A person shall not apply for taking the national unified legal profession qualification examination if: (1) he/she has been imposed with a criminal penalty for an intentional crime;

(2) he/she has been expelled from public office, or his/her lawyer's practice certificate or notary practice certificate has been revoked;

(3) His/her legal profession certificate has been revoked;

(4) The penalty imposed on him/her of no application for taking the national unified legal profession qualification examination (national judicature test) within two years doesn't expire, or he/she is banned from taking the national unified legal profession qualification examination (national judicial test) during his lifetime;

(5) He/she is determined by relevant national authorities as a joint punishment target for his severe dishonest activities and recorded in the national credit information sharing platform; or

(6) He/she is banned from engaging in the legal profession for lifetime due to other circumstances.

For a person in any of the aforesaid circumstances, his/her examination registration shall be null and void if he has gone through registration formalities; and his/her examination results shall be null and void if he has already taken the examination.

纳入国家信用信息共享平台的；

(六)因其他情形被给予终身禁止从事法律职业处理的。

有前款规定情形之一的人员，已经办理报名手续的，报名无效；已经参加考试的，考试成绩无效。

#### 第四章 考试内容和方式

#### Chapter IV Examination Content and Methods

**第十一条** 国家统一法律职业资格考试的具体考试时间和相关安排在举行考试三个月前向社会公布。

**Article 11** The specific time and relevant arrangements for the national unified legal profession qualification examination shall be made public three months before the examination.

**第十二条** 国家统一法律职业资格考试实行全国统一命题。

**Article 12** Exam questions of the national unified legal profession qualification examination shall be uniformly given by the State. The content and question scope of the national unified legal profession qualification examination shall be based on the Syllabus for the National Unified Legal Profession Qualification Examination published by the Ministry of Justice announced in the very year.

国家统一法律职业资格考试的内容和命题范围以司法部当年公布的《国家统一法律职业资格考试大纲》为准。

**第十三条** 国家统一法律职业资格考试每年举行一次，分为客观题考试和主观题考试两部分，综合考查应试人员从事法律职业应当具

**Article 13** The national unified legal profession qualification examination shall be held once a year. The examination consists of two parts, namely, objective test and subjective test to examine the political qualities, professional capabilities and professional ethics of examinees who intend to engage in the legal profession. Only the examinees who have passed the objective test can attend the subjective test. The results of

国家统一法律职业资格考试实施办法

有的政治素养、业务能力和职业伦理。

objective test are valid in the very year and the following test year.

应试人员客观题考试成绩合格的方可参加主观题考试，客观题考试成绩合格成绩在本年度和下一个考试年度内有效。

**第十四条** 国家统一法律职业资格考试实行纸笔考试或者计算机化考试。

**Article 14 Paper-based exam or computer-based exam is adopted for the national unified legal profession qualification examination.**

**第十五条** 国家统一法律职业资格考试实行全国统一评卷，统一确定合格分数线，考试成绩及合格分数线由司法部公布。

**Article 15 Unified exam paper scoring and unified determination of the passing score standards shall be adopted for the national unified legal profession qualification examination. Exam results and passing score standards will be publicized by the Ministry of Justice.**

**第五章 违纪处理**

**Chapter V Disciplinary Penalties**

**第十六条** 应试人员有违反考试纪律行为的，由司法行政机关按照有关规定，视其情节、后果，分别给予口头警告、责令离开考场并取消本场考试成绩、确认当年考试成绩无效、二年内不得报名参加国家统一法律职业资格考试的处理；构成故意犯罪的，给予终身不得报

**Article 16 An examinee who has violated exam disciplines will be imposed with penalties by judicial administrative authorities, such as give an oral warning, order to leave the examination room and cancel the results of the examination session, determine the examination results of the very year are null and void, or prohibit the offender from applying for taking the national unified legal profession qualification examination in two years in light of the actual situation and consequences. Where an intentional crime is committed, the offender will be prohibited from applying for taking the national unified legal profession qualification examination in his lifetime. Violations to public security administration regulations by examinees and other relevant persons shall be penalized by**

国家统一法律职业资格考试实施办法

名参加国家统一法律职业资格考试  
的处理。

public security authorities. Where a crime is committed, criminal liability will be prosecuted by judicial authorities.

应试人员及其他相关人员有违  
反治安管理行为的,由公安机关进  
行处理;构成犯罪的,由司法机关  
依法追究刑事责任。

**第十七条** 考试工作人员有违  
反工作纪律行为的,应当按照有关  
规定,视其情节、后果给予相应的  
处分;构成犯罪的,由司法机关依  
法追究刑事责任。

**Article 17** Where an exam staff violates work disciplines, he/she will be penalized according to relevant provisions in light of the actual situation and consequences. Where a crime is committed, criminal liability will be prosecuted by judicial authorities.

## 第六章 资格授予和管理

## Chapter VI Qualification and Management

**第十八条** 参加国家统一法律  
职业资格考试成绩合格,且不具有  
本办法第十条第一款规定情形的人  
员,可以按照规定程序申请授予法  
律职业资格,由司法部颁发法律职  
业资格证书。

**Article 18** A person who has passed the national unified legal profession qualification examination without falling in the scope of Paragraph 1, Article 10 of these Measures may apply for his legal profession qualification according to statutory procedures, and be issued with the legal profession qualification certificate by the Ministry of Justice.

**第十九条** 以欺骗、贿赂等不  
正当手段取得法律职业资格证书  
的,由司法部撤销原授予法律职业  
资格的决定,注销其法律职业资格

**Article 19** If a legal profession qualification certificate is obtained by deception, bribery or other improper means, the Ministry of Justice shall revoke the original decision of granting the legal profession qualification, and cancel its legal profession qualification certificate.

证书。

**第二十条** 取得法律职业资格人员有违反宪法和法律、妨害司法公正、违背职业伦理道德等行为的，由司法行政机关根据司法部有关规定，视其情节、后果，对其给予相应处理。

**Article 20** If a person qualified for the legal profession violates the Constitution and laws, impede judicial justice, or fails to follow professional or moral ethics, judicial administrative authorities may impose corresponding penalties in light of the actual situation and consequences according to the relevant provisions of the Ministry of Justice.

**第二十一条** 司法行政机关应当将取得法律职业资格人员的有关信息，以及依据本办法第十九条、第二十条作出相应处理人员的有关信息，录入国家法律职业资格管理系统，在司法部官方网站上公布。

**Article 21** Judicial administrative authorities shall record relevant information of the persons qualified for the legal profession, and of the persons imposed with corresponding penalties according to Articles 19 and 20 of these Measures, in the national legal profession qualification management system, and shall make public the same on the official website of the Ministry of Justice.

## 第七章 附则

## Chapter VII Supplementary Provisions

**第二十二条** 本办法实施前已取得学籍(考籍)或者已取得相应学历的高等学校法学类专业本科及以上学历毕业生，或者高等学校非法学类专业本科及以上学历毕业生并具有法律专业知识的，可以报名参加国家统一法律职业资格考试。

**Article 22** Persons who have been registered for study (or examination), or persons who have graduated with a bachelor degree or above from higher education institutions as legal majors, or persons graduated with a bachelor degree or above from higher education institutions as non-legal majors who have legal knowledge before the effectiveness of these Measures may apply to take the national unified legal profession qualification examination.

## 第二十三条 国家统一法律职

**Article 23** The diploma and degree criteria for applicants and passing score standards of the national unified legal



国家统一法律职业资格考试实施办法

业资格考试的实施，可以在一定时期内，对艰苦边远和少数民族地区的应试人员，在报名学历条件、考试合格标准等方面适当放宽，对其取得的法律职业资格实行分别管理，具体办法由国家统一法律职业资格考试协调委员会确定。

在民族自治地方组织国家统一法律职业资格考试，应试人员可以使用民族语言文字进行考试。

**profession qualification examination may be lowered within a certain period for examinees from poverty-stricken areas and ethnic minority areas. The legal profession qualification they have obtained shall be under separate administration with specific measures to be determined by the Coordination Committee of the national unified legal profession qualification examination.** During the national unified legal profession qualification examination arranged in ethnic autonomous areas, examinees may use their ethnic language to answer questions.

**第二十四条** 香港特别行政区、澳门特别行政区永久性居民中的中国公民和台湾地区居民参加国家统一法律职业资格考试，适用本办法规定。

**Article 24** These Measures are applicable to the taking of the national unified legal profession qualification examination by Chinese citizens who are permanent residents of the Hong Kong Special Administrative Region or the Macao Special Administrative Region and citizens from Taiwan.

**第二十五条** 现役军人参加国家统一法律职业资格考试的具体规则，由司法部会同中央军委政法委员会另行规定。

**Article 25** Specific rules on the taking of the national unified legal profession qualification examination by active-duty servicemen shall be separately formulated by the Ministry of Justice in concert with the Political and Legal Affairs Committee of the Central Military Commission.

**第二十六条** 国家统一法律职业资格考试的其他政策规定，经国家统一法律职业资格考试协调委员会确定后，在年度国家统一法律职

**Article 26** Other policies on the national unified legal profession qualification examination shall be made public in the annual announcement of the national unified legal profession qualification examination after determination by the Coordination Committee of the national unified legal profession qualification examination.

国家统一法律职业资格考试实施办法

业资格考试公告中公布。

**第二十七条** 本办法由司法部  
负责解释。

**Article 27** These Measures shall be interpreted by the Ministry of Justice.

**第二十八条** 本办法自公布之  
日起施行。

**Article 28** These Measures shall come into force on the date of promulgation.



扫一扫，手机阅读更方便

# **Exhibit B-12**

**The General Office of the Central Committee of the Communist Party of China and the General Office of the State Council Issuing the Opinions on Promoting the Legal Adviser System and the Government Lawyer and Corporate Lawyer System**

Area of Law:	Lawyer Practices
Level of Authority:	System of Party Regulations
Issuing Authority:	General Office of the Central Committee of the Communist Party of China (General Office, CCCPC) General Office of the State Council
Date Issued:	06-16-2016
Effective Date:	06-16-2016
Status:	Effective

The General Office of the Central Committee of the Communist Party of China and the General Office of the State Council Issuing the Opinions on Promoting the Legal Adviser System and the Government Lawyer and Corporate Lawyer System

中共中央办公厅、国务院办公厅印发《关于推行法律顾问制度和公职律师公司律师制度的意见》

(June 16, 2016)

(2016年6月16日)

For the purpose of implementing the spirit of the 18th National Congress of the Communist Party of China (CPC) and the Third, Fourth, and Fifth Plenary Sessions of the 18th CPC Central Committee, vigorously promoting legal adviser system and government lawyer and corporate lawyer system, and allowing legal advisers, government lawyers and corporate lawyers to fully play their role, the following opinions are hereby offered:

为贯彻落实党的十八大和十八届三中、四中、五中全会精神，积极推行法律顾问制度和公职律师、公司律师制度，充分发挥法律顾问、公职律师、公司律师作用，现提出以下意见。

II. Guiding thought, basic principles, objectives and tasks

一、指导思想、基本原则和目标任务

(1) Guiding thought. By conscientiously implementing the 18th CPC National Congress and the Third, Fourth, and Fifth Plenary Sessions of the 18th CPC Central Committee, guided by the Deng Xiaoping Theory, the important thoughts of “Three Represents” and the Scientific Outlook on Development, by studying and implementing in depth the spirit of a series of important speeches delivered by the General Secretary Xi Jinping, by unswervingly adhering to the legal path of the socialism with Chinese characteristics, based on China's actuality, by following the pattern of legal construction and the characteristics of legal advisers and lawyers' work, the legal adviser system and the government lawyer and corporate lawyer system shall be vigorously promoted so as to improve the ability in exercise of state power by law, administration of government by law, business by law and management by law, promote business handling according to the law and provide legal guarantee to the coordinated development of the strategic arrangement of “Four Comprehensives.”

(2) Basic principles. Adhering to correct political directions. The CPC leadership shall be adhered to, and professional law talents with high political quality, upholding CPC theories, path and policies shall be selected for the legal adviser, government lawyer and corporate lawyer teams.

（一）指导思想。认真贯彻落实党的十八大和十八届三中、四中、五中全会精神，以邓小平理论、“三个代表”重要思想、科学发展观为指导，深入学习贯彻习近平总书记系列重要讲话精神，坚定不移走中国特色社会主义法治道路，从我国国情出发，遵循法治建设规律和法律顾问、律师工作特点，积极推行法律顾问制度和公职律师、公司律师制度，提高依法执政、依法行政、依法经营、依法管理的能力水平，促进依法办事，为协调推进“四个全面”战略布局提供法治保障。

（二）基本原则。坚持正确政治方向。坚持党的领导，选拔政治素质高、拥护党的理论和路线方针政策的法律专业人才进入法律顾问和公职律师、公司律师队伍。

Adhering to the implementation of categorized regulation. Based on the actuality, the legal adviser system and the government lawyer and corporate lawyer system shall be promoted by category in CPC and government departments, the people's groups, and state-owned enterprises and public institutions, the policy orientation and basic requirement shall be specified, and all regions, all departments and all entities shall be encouraged to, in comprehensive consideration of the need of institutions, personnel and work, choose organizational forms, work modes and management modes in conformity with actuality, and vigorously and steadily conduct the implementation.

坚持分类规范实施。从实际出发，在党政机关、人民团体、国有企事业单位分类推行法律顾问制度和公职律师、公司律师制度，明确政策导向和基本要求，鼓励各地区各部门各单位综合考虑机构、人员情况和工作需要，选择符合实际的组织形式、工作模式和管理方式，积极稳妥实施。

Adhering to the overall arrangement, connection and advancement. By focusing on the overall development of the socialist legal affairs team, the connection between legal advisers and government lawyers as well as corporate lawyers shall be handled effectively, and the communication channel between government lawyers, corporate lawyers and private lawyers, judges, as well as public procurators shall remain unimpeded. The grandfather clause shall apply, and upon the implementation of the unified national legal profession qualification system, persons to act as legal advisers at CPC and government departments, the people's groups, and state-owned enterprises and institutions shall have legal profession qualification or lawyer qualification.

坚持统筹衔接推进。着眼于社会主义法治工作队伍建设大局，处理好法律顾问与公职律师、公司律师之间的衔接，畅通公职律师、公司律师与社会律师、法官、检察官之间的交流渠道。实行老人老办法、新人新办法，国家统一法律职业资格制度实施后，党政机关、人民团体、国有企事业单位拟担任法律顾问的人员应当具有法律职业资格或者律师资格。

(3) Objectives and tasks. Prior to the end of 2017, all departments and commissions of the CPC Central Committee and the state authorities, and local CPC and government departments at and above the county levels shall universally establish positions of legal advisers and government lawyers, the township CPC committees and governments shall, based on their need, establish positions of legal advisers and government lawyers, state-owned enterprises shall advance in depth the legal adviser and corporate lawyer systems, and public institutions shall research and establish a legal adviser system, so that by 2020 the legal adviser, government lawyer and corporate lawyer systems with Chinese characteristics, suitable for the need of social and economic development and legal services shall be comprehensively established.

## III. Establishing and improving the legal adviser and government lawyer systems of the CPC and government departments

(4) Vigorously promoting the legal adviser system in the CPC and government departments, and establishing a legal adviser team mainly consisting of personnel of CPC's regulations institutions and government legal institutions, and including law experts and lawyers.

Functionaries engaging in legal affairs within CPC and government departments, and law experts and lawyers externally employed by those departments, may act as legal advisers. The regulations affairs institutions within CPC and the government legal institutions shall play the role as legal advisers in the name of collectives.

(三) 目标任务。2017年底前，中央和国家机关各部委，县级以上地方各级党政机关普遍设立法律顾问、公职律师，乡镇党委和政府根据需要设立法律顾问、公职律师，国有企业深入推进法律顾问、公司律师制度，事业单位探索建立法律顾问制度，到2020年全面形成与经济社会发展和法律服务需求相适应的特色法律顾问、公职律师、公司律师制度体系。

## 二、建立健全党政机关法律顾问、公职律师制度

(四) 积极推行党政机关法律顾问制度，建立以党内法规工作机构、政府法制机构人员为主体，吸收法学专家和律师参加的法律顾问队伍。

党政机关内部专门从事法律事务的工作人员和机关外聘的法学专家、律师，可以担任法律顾问。党内法规工作机构、政府法制机构以集体名义发挥法律顾问作用。



(5) Where a person acts as a legal adviser at the CPC or government department, but has not obtained any legal profession qualification or lawyer qualification, he may continue performing the duties as a legal adviser. Upon the implementation of the unified national legal profession qualification system, persons planning to act as legal advisers at CPC and government departments shall have legal profession qualification or lawyer qualification.

(6) The local CPC committees and governments at or above the county level, and departments with relatively more legal affairs, shall assign full-time personnel suitable for work tasks to act as legal advisers; local CPC committees and government departments at or above the county level with relatively fewer legal affairs may assign part-time personnel to perform the duties of legal advisers. The township CPC committees and governments may, based on the need of their work, assign full-time or part-time personnel to perform the duties of legal advisers.

(7) The legal advisers of CPC and government departments shall perform the following duties:

- i. offering legal opinions on significant decision making and significant administrative acts;
- ii. participating in the drafting and argumentation of draft laws, regulations and rules, draft CPC regulations and regulatory documents to be submitted for review;

(五) 在党政机关已担任法律顾问但未取得法律职业资格或者律师资格的人员,可以继续履行法律顾问职责。国家统一法律职业资格制度实施后,党政机关拟担任法律顾问的人员应当具有法律职业资格或者律师资格。

(六) 县级以上地方党委和政府以及法律事务较多的工作部门应当配备与工作任务相适应的专职人员担任法律顾问;法律事务较少的县级以上地方党委和政府工作部门可以配备兼职人员履行法律顾问职责。乡镇党委和政府可以根据工作需要,配备专职或者兼职人员履行法律顾问职责。

(七) 党政机关法律顾问履行下列职责:

1. 为重大决策、重大行政行为提供法律意见;
2. 参与法律法规规章草案、党内法规草案和规范性文件送审稿的起草、论证;

iii. participating in the negotiation of cooperation

programs, and assisting in drafting or amending important legal instruments or significant contracts with any CPC or government department as one party;

3. 参与合作项目的洽谈，协助起草、修改重要的法律文书或者以党政机关为一方当事人的重大合同；

iv. providing legal services for the handling of cases involving laws or lawsuits, public complaint cases and significant emergencies;

4. 为处置涉法涉诉案件、信访案件和重大突发事件等提供法律服务；

v. participating in the handling of administrative reconsideration, lawsuit, arbitration, and other legal affairs; and

5. 参与处理行政复议、诉讼、仲裁等法律事务；

vi. other duties prescribed by CPC and government departments the legal adviser work with.

6. 所在党政机关规定的其他职责。

(8) A recruited legal adviser shall meet the following conditions:

(八) 外聘法律顾问应当具备下列条件：

i. high political quality, upholding CPC theories, path and policies, and generally a CPC member;

1. 政治素质高，拥护党的理论和路线方针政策，一般应当是中国共产党党员；

ii. good professional ethics and sense of social responsibility;

2. 具有良好职业道德和社会责任感；

iii. law expert with certain influence and experience in law teaching, law research, law practice and other fields he engages in, or lawyer with 5 years of law practice experience and relative better professional competence;

3. 在所从事的法学教学、法学研究、法律实践等领域具有一定影响和经验的法学专家，或者具有5年以上执业经验、专业能力较强的律师；

iv. strict observation of laws and disciplines, no record of criminal punishment, and, in the case of a lawyer to be employed as a legal adviser, no record of administrative punishment by the administrative department of justice or trade penalty by lawyers' association; and

v. other requirements prescribed by the employer.

(9) An externally employed legal adviser shall be selected by open, fair and impartial means. The employed legal adviser shall be granted a letter of appointment by the employer.

(10) An externally employed legal adviser shall, during his office, have the following rights:

i. offering legal opinions based on facts and laws;

ii. acquiring information, documents, files and other necessary working conditions relating to his performance of duties;

iii. acquiring job remuneration and benefits as agreed on; and

iv. other rights as agreed on with the employer.

(11) An externally employed legal adviser shall, during his office, undertake the following obligations:

i. observing confidentiality rules, no leakage of CPC and state secrets, work secrets, business secrets or other information which shall not be disclosed, and no disclosure of the job details he undertakes without authorization;

4. 严格遵守守法，未受过刑事处罚，受聘担任法律顾问的律师还应当未受过司法行政部门的行政处罚或者律师协会的行业处分；

5. 聘任机关规定的其他条件。

（九）外聘法律顾问应当通过公开、公平、公正的方式遴选。被聘为法律顾问的，由聘任机关发放聘书。

（十）外聘法律顾问在履行法律顾问职责期间享有下列权利：

1. 依据事实和法律，提出法律意见；

2. 获得与履行职责相关的信息资料、文件和其他必需的工作条件；

3. 获得约定的工作报酬和待遇；

4. 与聘任机关约定的其他权利。

（十一）外聘法律顾问在履行法律顾问职责期间承担下列义务：

1. 遵守保密制度，不得泄露党和国家的秘密、工作秘密、商业秘密以及其他不应公开的信息，不得擅自对外透露所承担的工作内容；

ii. no use of undisclosed information obtained during his office or convenient conditions for personal gain, or the gain of the entity he works with or others;

iii. no engagement in business activities with the identity as a legal adviser, or other activities irrelevant to the duties as a legal adviser;

iv. no handling of legal affairs conflicting with the interests of his employer by accepting the entrustment of any other party, and if a legal adviser has an interest relationship with the business he undertakes which may possibly affect his impartial performance of duties, he shall avoid being present; and

v. other obligations as agreed on with the employer.

(12) The municipal, county and township CPC committees and governments at the same level may jointly externally employ legal advisers to provide services to the CPC and government departments; the CPC committees and governments may respectively, uniformly and externally employ legal advisers to provide services to CPC committees and governments and their working departments.

(13) CPC and government departments at all levels may, under these Opinions, establish the positions of government lawyers. "Government lawyer" means a public officer of any CPC or government department who has obtained government lawyer license under the provisions of (25) and (26) of these Opinions.

2. 不得利用在工作期间获得的非公开信息或者便利条件，为本人及所在单位或者他人牟取利益；

3. 不得以法律顾问的身份从事商业活动以及与法律顾问职责无关的活动；

4. 不得接受其他当事人委托，办理与聘任单位有利益冲突的法律事务，法律顾问与所承办的业务有利害关系、可能影响公正履行职责的，应当回避；

5. 与聘任机关约定的其他义务。

（十二）市、县、乡同级党委和政府可以联合外聘法律顾问，为党政机关提供服务；党委和政府可以分别统一外聘法律顾问，为党委和政府及其工作部门提供服务。

（十三）各级党政机关根据本意见设立公职律师。公职律师是依照本意见第二十五条、第二十六条规定取得公职律师证书的党政机关公职人员。

(14) A government lawyer shall perform the duties assumed by the legal adviser of the CPC or government department, and may, as authorized by the entity he works with, represent the entity he works with to engage in lawyer's legal services. A government lawyer shall, during practicing law, have law practice rights in meeting, consulting case files, investigating and taking evidence, questioning, cross-examination, debate, and other aspects as provided by the Lawyers Law, etc. and other rights as provided by the Lawyers Law.

（十四）公职律师履行党政机关法律顾问承担的职责，可以受所在单位委托，代表所在单位从事律师法律服务。公职律师在执业活动中享有律师法等规定的会见、阅卷、调查取证和发问、质证、辩论等方面的律师执业权利，以及律师法规定的其他权利。

(15) No government lawyer shall engage in paid legal services, assume any concurrent job at law firms or other legal service institutions, or, as a lawyer, handle any litigation or non-litigation legal affairs irrelevant to the entity he works with.

（十五）公职律师不得从事有偿法律服务，不得在律师事务所等法律服务机构兼职，不得以律师身份办理所在单位以外的诉讼或者非诉讼法律事务。

(16) Where any legal adviser or government lawyer of a CPC or government department neglects his duty or engages in malpractice for personal benefits, he shall be handled in accordance with the law and disciplines; in the case of an externally employed legal adviser, he shall be dismissed, which shall be included into the legal adviser job archive and personal credit archive, which the lawyers' association and the entity he works with shall be notified, and he shall be held for accountability in accordance with the law.

（十六）党政机关法律顾问、公职律师玩忽职守、徇私舞弊的，依法依规处理；属于外聘法律顾问的，予以解聘，并记入法律顾问工作档案和个人诚信档案，通报律师协会或者所在单位，依法追究责任。

III. Establishing and improving a national state-owned enterprise legal adviser and corporate lawyer system

三、建立健全国有企业法律顾问、公司律师制度

(17) At the wholly state-owned or state-controlled enterprises (hereinafter referred to as “state-owned enterprises”) in industry, commerce, finance, culture, or other sectors, employees specially engaging in enterprise legal affairs and lawyers externally employed by such enterprises may act as legal advisers.

（十七）工商、金融、文化等行业的国有独资或者控股企业（以下简称国有企业）内部专门从事企业法律事务的工作人员和企业外聘的律师，可以担任法律顾问。

Any person who acts as a legal adviser at state-owned enterprises, but has not obtained any legal profession qualification or lawyer's qualification may continue performing the duties as a legal adviser. Upon the implementation of the unified national legal profession qualification system, employees or other externally employed persons planning to work as legal advisers at state-owned enterprises shall have legal profession qualification or lawyer qualification, except where acting legal advisers of other state-owned enterprises are employed. If it is difficult for the minority state-owned enterprises in isolated and remote areas to recruit legal advisers with legal profession qualification or lawyer qualification, the existing practice of recruiting legal advisers may remain in force.

在国有企业已担任法律顾问但未取得法律职业资格或者律师资格的人员，可以继续履行法律顾问职责。国家统一法律职业资格制度实施后，国有企业拟担任法律顾问的工作人员或者外聘的其他人员，应当具有法律职业资格或者律师资格，但外聘其他国有企业现任法律顾问的除外。少数偏远地方国有企业难以聘任到具有法律职业资格或者律师资格的法律顾问的，可以沿用现行聘任法律顾问的做法。

Assistants to legal advisers is not required to have legal profession qualification or lawyer qualification.

法律顾问的辅助人员可不具有法律职业资格或者律师资格。

State-owned enterprises shall externally employ legal advisers by reference to the provisions of (8), (9), (10) and (11) of these Opinions.

国有企业外聘法律顾问参照本意见第八条、第九条、第十条、第十一条规定办理。

(18) State-owned enterprises may, based on the enterprise size and business need, establish legal affairs institutions or assign or employ a certain number of legal advisers.

（十八）国有企业可以根据企业规模和业务需要设立法律事务机构或者配备、聘请一定数量的法律顾问。

Medium- and large-scale enterprises may establish the position of chief legal adviser and allow the chief legal adviser to play his controlling role in the legal review of business management, so as to advance the lawful operation and regulatory compliance management of enterprises.

国有大中型企业可以设立总法律顾问，发挥总法律顾问对经营管理活动的法律审核把关作用，推进企业依法经营、合规管理。

(19) A legal adviser of a state-owned enterprise shall perform the following duties:

（十九）国有企业法律顾问履行下列职责：

i. participating in the formulation of the articles of association, and the operation rules of the board of directors;

1. 参与企业章程、董事会运行规则的制定；

ii. legally reviewing the significant business decision making, rules and systems, and contracts of enterprises;

2. 对企业重要经营决策、规章制度、合同进行法律审核；

iii. offering legal opinions on the restructuring, merger and acquisition, listing, transfer of property right, bankruptcy and reorganization, reconciliation, liquidation, and other significant matters of enterprises;

3. 为企业改制重组、并购上市、产权转让、破产重整、和解及清算等重大事项提出法律意见；

iv. Organizing and conducting regulatory compliance management, risk management, intellectual property management, externally employed lawyer management, legal publicity, education and training, and legal consultation;

4. 组织开展合规管理、风险管理、知识产权管理、外聘律师管理、法治宣传教育培训、法律咨询；

v. Organizing and handling lawsuits, and arbitration cases; and

5. 组织处理诉讼、仲裁案件；

vi. other duties prescribed by the enterprise the legal advisers work with.

6. 所在企业规定的其他职责。



(20) Legal advisers shall be responsible for the supervision of the legal and regulatory compliance of the business and management of enterprises, and shall offer opinions on the acts of enterprises in violations of laws and regulations, and urge enterprises to make rectification. If a legal adviser is aware of the act of the enterprise in violations of laws and regulations, but fails to give a warning or stop that act, he shall assume corresponding responsibility.

（二十）国有企业法律顾问对企业经营管理行为的合法合规性负有监督职责，对企业违法违规行为提出意见，督促整改。法律顾问明知企业存在违法违规行为，不警示、不制止的，承担相应责任。

(21) State-owned enterprises shall establish the position of corporate lawyer based on need. "Corporate lawyer" means an employee who has concluded a labor contract with an enterprise, and has obtained corporate lawyer license under the provisions of (25) and (26) of these Opinions.

（二十一）国有企业根据需要设立公司律师。公司律师是与企业依法签订劳动合同，依照本意见第二十五条、第二十六条规定取得公司律师证书的员工。

(22) A corporate lawyer shall perform the duties undertaken by the legal adviser of the state-owned enterprise, and may, as authorized by the entity he works with, represent the entity he works with to engage in lawyer's legal services. A corporate lawyer shall, during practicing law, have law practice rights in meeting, consulting case files, investigating and taking evidence, questioning, cross-examination, debate, and other aspects as provided by the Lawyers Law, etc. and other rights as provided by the Lawyers Law.

（二十二）公司律师履行国有企业法律顾问承担的职责，可以受所在单位委托，代表所在单位从事律师法律服务。公司律师在执业活动中享有律师法等规定的会见、阅卷、调查取证和发问、质证、辩论等方面的律师执业权利，以及律师法规定的其他权利。

(23) No corporate lawyer shall engage in paid legal services, assume any concurrent job at law firms or other legal service institutions, or, as a lawyer, handle any litigation or non-litigation legal affairs irrelevant to the entity he works with.

（二十三）公司律师不得从事有偿法律服务，不得在律师事务所等法律服务机构兼职，不得以律师身份办理所在单位以外的诉讼或者非诉讼法律事务。

#### IV. Improving administrative systems

#### 四、完善管理体制

(24) The CPC's regulations institutions, the government legal institutions and the legal affairs departments of state-owned enterprises shall respectively assume the duties of the general office of their legal advisers, and shall be responsible for the routine business management of their legal advisers, government lawyers or corporate lawyers, assist and organize human resources departments to select, recruit, train, appraise, and punish or reward legal advisers, government lawyers or corporate lawyers, and assess the employees or functionaries who have applied for a government lawyer or corporate lawyer license, etc.

（二十四）党内法规工作机构、政府法制机构和国有企业法律事务部门，分别承担本单位法律顾问办公室职责，负责本单位法律顾问、公职律师、公司律师的日常业务管理，协助组织人事部门对法律顾问、公职律师、公司律师进行遴选、聘任、培训、考核、奖惩，以及对本单位申请公职律师、公司律师证书的工作人员进行审核等。

(25) Where a person specially engages in legal affairs or acts as a legal adviser at a CPC or government department, or acts as a legal adviser of a state-owned enterprise, and has legal profession qualification or lawyer qualification, upon the consent of the entity he works with, he may apply to the administrative department of justice for the issuance of government lawyer or corporate lawyer license. If, upon assessment, the applicant is qualified for legal profession or to be a lawyer, the administrative department of justice shall grant him a government lawyer or corporate lawyer license.

（二十五）在党政机关专门从事法律事务工作或者担任法律顾问、在国有企业担任法律顾问，并具有法律职业资格或者律师资格的人员，经所在单位同意可以向司法行政部门申请颁发公职律师、公司律师证书。经审查，申请人具有法律职业资格或者律师资格的，司法行政部门应当向其颁发公职律师、公司律师证书。

(26) In respect of a person who has acted as a legal adviser prior to the implementation of the unified national legal profession qualification system but has not obtained legal profession qualification or lawyer qualification, if he meets the following conditions, and passes the appraisal of the administrative department of justice of the State Council, the administrative department of justice of the State Council shall grant him a government lawyer or corporate lawyer license:

i. acting as a legal adviser at a CPC or government department, or at a state-owned enterprise at least 15 years;

ii. possessing undergraduate education in law at universities or colleges with a bachelor's degree or above, or undergraduate education or above not in law at universities or colleges but with a degree of juris master , master of law, or any other correspondin degree; and

iii. a senior professional title or an equivalent professional title.

（二十六）国家统一法律职业资格制度实施前已担任法律顾问、未取得法律职业资格或者律师资格的人员具备下列条件，经国务院司法行政部门考核合格的，由国务院司法行政部门向其颁发公职律师、公司律师证书：

1. 在党政机关、国有企业担任法律顾问满15年；

2. 具有高等学校法学类本科学历并获得学士及以上学位，或者高等学校非法学类本科及以上学历并获得法律硕士、法学硕士及以上学位或者获得其他相应学位；

3. 具有高级职称或者同等专业水平。

(27) If a government lawyer or a corporate lawyer leaves his former entity, he may apply to become a private lawyer, and his term as a government lawyer or a corporate lawyer shall be calculated as the term of practice as a private lawyer. If any person acts as a government lawyer or corporate lawyer according to (26) of these Opinions but applies to become a private lawyer, he shall conform to the relevant provisions of the unified national legal profession qualification system. If a government lawyer or corporate lawyer is selected as a judge or public procurator according to the relevant procedures, at the determination of his rank as a judge or a public procurator, consideration shall be given to the term and experience of his engagement in the work as a government lawyer or a corporate lawyer.

（二十七）公职律师、公司律师脱离原单位，可以申请转为社会律师，其担任公职律师、公司律师的经历计入社会律师执业年限。依照本意见第二十六条规定担任公职律师、公司律师，申请转为社会律师的，应当符合国家统一法律职业资格制度的相关规定。公职律师、公司律师依照有关程序遴选为法官、检察官的，确定法官、检察官等级应当考虑其从事公职律师、公司律师工作的年限、经历。

(28) The lawyers' association shall undertake the business exchange and guidance for government lawyers and corporate lawyers, protection of lawyers' rights and interests, self-regulation, and other work.

（二十八）律师协会承担公职律师、公司律师的业务交流指导、律师权益维护、行业自律等工作。

## V. Strengthening organization and leadership

## 五、加强组织领导

(29) The main persons in charge of CPC or government departments shall be the first responsible persons to advance legal construction, and shall conscientiously ensure the implementation of the legal adviser, government lawyer and corporate lawyer systems in their respective entities, departments or regions.

（二十九）党政机关主要负责同志作为推进法治建设第一责任人，要认真抓好本地区本部门本单位法律顾问、公职律师、公司律师制度的实施。

(30) The CPC and government departments shall give full play of the role of legal advisers and government lawyers according to the following requirements:

（三十）党政机关要按照以下要求充分发挥法律顾问、公职律师的作用：

i. they shall, prior to the discussion and decision making on significant matters, hear the legal opinions of legal advisers or government lawyers;

1. 讨论、决定重大事项之前，应当听取法律顾问、公职律师的法律意见；

ii. if they draft and argue about the relevant draft laws, regulations and rules, draft CPC regulations, and regulatory documents to be submitted for review, they shall request legal advisers or government lawyers to participate, or hear their legal opinions;

2. 起草、论证有关法律法规规章草案、党内法规草案和规范性文件送审稿，应当请法律顾问、公职律师参加，或者听取其法律意见；

iii. in respect of a matter on which the opinions of legal advisers or government lawyers failed to be heard but should have been heard according to the relevant provisions, or which legal advisers or government lawyers deem not to be in conformity with laws and regulations, it shall not be submitted for discussion or no decision on it shall be made.

3. 依照有关规定应当听取法律顾问、公职律师的法律意见而未听取的事项，或者法律顾问、公职律师认为不合法不合规的事项，不得提交讨论、作出决定。

If a major loss or serious bad impact is caused by the fact that the opinions of legal advisers or government lawyers which should have been heard failed to be heard, that the request which should have been made for legal advisers or government lawyers to participate failed to be made, or that the opinions of legal advisers or government lawyers which should have been adopted failed to be adopted, the main persons in charge of the CPC or government departments, other responsible leaders, and relevant responsible persons shall be held accountable in accordance with the laws and regulations.

对应当听取法律顾问、公职律师的法律意见而未听取，应当请法律顾问、公职律师参加而未落实，应当采纳法律顾问、公职律师的法律意见而未采纳，造成重大损失或者严重不良影响的，依法依规追究党政机关主要负责人、负有责任的其他领导人员和相关责任人员的责任。

(31) State-owned enterprises shall give full play of the role of legal advisers and corporate lawyers according to the following requirements:

（三十一）国有企业要按照以下要求充分发挥法律顾问、公司律师的作用：

i. they shall, prior to the discussion and decision making on significant matters as to the business and management of enterprises, hear the legal opinions of legal advisers or government lawyers;

ii. they shall, when drafting articles of association, the operation rules of the board of directors, etc. request legal advisers or corporate lawyers to participate, or hear their legal opinions;

iii. in respect of a matter on which the opinions of legal advisers or corporate lawyers failed to be heard but should have been heard according to the relevant provisions, or which legal advisers or corporate lawyers deem not in conformity with laws and regulations, it shall not be submitted for discussion or no decision on it shall be made.

If a major loss or serious bad impact is caused by the fact that the opinions of legal advisers or corporate lawyers which should have been heard failed to be heard, that the request which should have been made for legal advisers or corporate lawyers to conduct legal review failed to be made, or that the opinions of legal advisers or corporate lawyers which should have been adopted failed to be adopted, the main persons in charge of state-owned enterprises, other responsible leaders, and relevant responsible persons shall be held accountable in accordance with the laws and regulations.

1. 讨论、决定企业经营管理重大事项之前，应当听取法律顾问、公司律师的法律意见；

2. 起草企业章程、董事会运行规则等，应当请法律顾问、公司律师参加，或者听取其法律意见；

3. 依照有关规定应当听取法律顾问、公司律师的法律意见而未听取的事项，或者法律顾问、公司律师认为不合法不合规的事项，不得提交讨论、作出决定。

对应当听取法律顾问、公司律师的法律意见而未听取，应当交由法律顾问、公司律师进行法律审核而未落实，应当采纳法律顾问、公司律师的法律意见而未采纳，造成重大损失或者严重不良影响的，依法依规追究国有企业主要负责人、负有责任的其他领导人员和相关责任人员的责任。

(32) The CPC and government departments at all levels shall include the work on legal advisers, government lawyers and corporate lawyers into the appraisal of the target-oriented responsibility system of CPC and government departments, and state-owned enterprises. The development of legal adviser, government lawyer and corporate lawyer teams shall be promoted, and the working mechanisms and the measures for the administration of routine management, business training, appraisal, punishment, reward, etc. shall be improved, so as to promote the rationality and standardization of the relevant work.

（三十二）各级党政机关要将法律顾问、公职律师、公司律师工作纳入党政机关、国有企业目标责任制考核。推动法律顾问、公职律师、公司律师力量建设，完善日常管理、业务培训、考评奖惩等工作机制和管理办法，促进有关工作科学化、规范化。

(33) The CPC and government departments shall include the funds with regard to legal advisers and government lawyers into financial budget, and by means of government procurement or financial subsidy, based on workload and work performance, reasonably determine the remuneration of recruited legal advisers, so as to provide necessary guarantee for legal advisers and government lawyers to conduct their work.

（三十三）党政机关要将法律顾问、公职律师经费列入财政预算，采取政府购买或者财政补贴的方式，根据工作量和工作效率合理确定外聘法律顾问报酬，为法律顾问、公职律师开展工作提供必要保障。

(34) The local CPC committees and the governments at and above the county levels and the administrative competent departments of education, health, etc. shall strengthen guidance, implement measures by category, make advancement with priorities, encourage research, and gradually advance the development of the legal adviser system at public institutions.

（三十四）县级以上地方各级党委和政府以及教育、卫生等行政主管部门要加强指导、分类施策、重点推进、鼓励探索，有步骤地推进事业单位法律顾问制度建设。

(35) The people's groups shall establish legal adviser and government lawyer systems by reference to these Opinions.

（三十五）人民团体参照本意见建立法律顾问、公职律师制度。



(36) All regions and all departments may, based on

actuality, formulate specific measures according to these

（三十六）各地区各部门可结合实际，按照本意见制定具体办法。

Opinions.

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法寶

# **Exhibit B-13**

# 当事人文书提出义务的制度建构

张卫平

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**摘 要** 我国民事诉讼中的文书提出义务，应采取限定主义。原则上应当以实体法上的文书提出请求权为依据。民事诉讼法可以作出必要的补充规定，允许诉讼中引用过的文书、利益文书和法律关系文书作为义务文书的范围，明确文书提出义务命令的申请和审查程序，强化不履行文书提出义务命令的法律后果。

**关键词** 民事诉讼 举证责任 书证 文书提出义务 案件解明义务

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## 问题的提出

民事裁判正当性的基础在于对案件事实的尊重。作为裁判基础的案件事实必须依赖于当事人提出的各种证据来证明，未提出相应证据的当事人，将面临相应的不利后果。通常情况下，只有当事人自行支配控制的证据，当事人才能向法院提交。然而，在现实中往往存在当事人主张的证据并不为自己所控制的情形。以能够直接证明案件事实的书证为例，该书证可能被对方当事人所持有，也可能被当事人之外的第三人所持有。尤其在环境侵权诉讼、消费者诉讼、劳动争议诉讼等现代型诉讼中，由于一方当事人在法律关系形成中处于优势地位，对于证明法律关系的各种证据具有更大的控制权，也就形成了所谓“证据偏在”的情形。证据被对方当事人控制时，如果该书证对持有的当事人不利，当事人不会主动地将其提交给对方当事人或法院。基于收集提交证据的成本负担，持有文书的第三人往往也不愿意向举证人提供该证据。如此一来，负有证明责任的一方当事人便会面临不利或败诉的结局，同时，也因为没有提出该证据，使得裁判没有完全建立在事实的基础之上，难以充分实现裁判的实质正当性。

为了发现真实，克服“证据偏在”，2001年最高人民法院《关于民事诉讼证据的若干规定》（下称《证据规定》）第75条课予证据持有人以“证据提出义务”，按此“有证据证明一方当事人持有证据无正当理由拒不提供，如果对方当事人主张该证据的内容不利于证据持有人，可以推定该

主张成立。”虽然该规定设定了一些条件——有证据证明一方当事人持有证据，且无正当理由拒不提供，也设定了不提出的后果——推定主张成立，但由于该规定既没有限定证据的种类，也没有限定证据的范围，等于要求凡是持有证据的当事人都有义务提供证据。这一规定过于简单和粗暴，呈现出强烈的职权主义色彩，导致实际运用中的混乱。

2015 年最高人民法院《关于适用〈中华人民共和国民事诉讼法〉的解释》（下称《民诉法解释》）相比《证据规定》在解决“证据偏在”问题上有一定的进步，创设了文书提出义务制度，有了相对简单的程序性限定条件、操作程序和责任后果，不过距离文书（书证——下同）提出义务制度的充实和完善还有很大的差距。

## 一、我国当事人文书提出义务制度的基本框架

在我国传统的职权主义诉讼理念和诉讼体制之下，法院作为居于中立地位的裁判机关，可以超越自己的中立地位，履行和担当查明案件事实的职责。因此，在制度上很容易作出职权调查的安排。在文书提出的问题上，易将文书提出义务一般化，甚至绝对化。在职权主义最盛的时期，包括书证在内的所有证据都在有义务提出的范围之内，而不考虑与之相关的实体权利保护、诉讼平等原则、当事人自我责任。随着人们权利意识的提高，职权主义虽然在不断收缩，但在论及文书提出义务时，依然容易走向一般化的道路。因此，理论上不能以一些国家和地区文书提出义务的扩大化趋势作为职权主义强势回归的根据。

以案件事实作为裁判的依据，发现真实是每一个国家(地区)民事诉讼的价值追求，这是没有疑问的。但是如何揭示案件事实，不同国家(地区)的理念和制度安排有所不同，其中涉及多种因素——价值之间的衡平、历史沿革、制度现状、可实施性。在不同的时期，对于揭示案件事实的手段的认识也有所不同。在当事人主义诉讼理念下，案件事实的揭示依赖于当事人，国家(地区)和法院不能介入。按照大陆法系民事诉讼辩论原则的基本要求，诉讼资料的收集属于当事人的机能和责任。当事人对自己提出的事实主张有提出证据加以证明的责任，如果主张的要件事实不能得到证明，该事实真伪不明时，当事人就要承担由此产生的不利后果，即承担所谓的客观证明责任。按照文书提出义务的规定，负证明责任的一方当事人可以申请法院向文书持有人发布命令，责令其提交该书证。法院发出文书提出命令的，文书持有人应向法院提交被请求给付的文书，但是这种请求必须是基于实体法上的请求权以及诉讼法上明确的规定。例如德国民事诉讼中的文书提出义务就明确限制在民法、商法等实体法有明确规定的情形。文书提出义务在诉讼法上仅适用于该文书为不负有证明责任的当事人曾经在诉讼中引用过。日本和我国台湾地区在 1996 年民事诉讼法修改之前都采用了德国关于文书提出义务的制度规定。但由于现代型诉讼案件大量增加，在这些诉讼中明显存在“证据偏在”的情形，基于武器平等、当事人公平、发现真实、公平裁判的诉讼理念，德国、日本等国家和地区都扩大了文书提出义务的范围。日本在文书提出义务的范围方面走得更远一些。除了依据实体法的规定应当提出以及引用过的文书之外，还规定只要不属于依法予以排除的情形都应当提出。<sup>①</sup>我国台湾地区在“民事诉

<sup>①</sup> 参见 [日] 新堂幸司《民事诉讼法》，林剑锋译，法律出版社 2008 年版，第 417、419 页；[日] 山本和彦编《文书提出命令的理论与实务》，民事法研究会 2010 年版，第 47 页。

讼法”修改后也扩大了文书提出的范围，与本案诉讼有关的事项所制作的文书都包含在有义务提出的文书范围之内。德国的做法与此不同，德国虽然有所扩大，但主要是通过对实体法请求权适用的扩张解释来实现的，而非诉讼法上抽象地授权举证人请求文书持有人提出其持有的文书。

对于文书提出义务的扩大化或提出义务一般化，我们必须要有清晰的认识。即使是日本法上文书提出义务的一般化，也同样有明确的条件限制。所谓文书提出义务的一般化，是相对于过去的列举式而言，法律将原来的只有明确规定的情形才能提出文书，修改为没有明确不得提出的情形即属于可以提出文书的范围。但如果仔细分析就可以发现这些限定同样是抽象和宽泛的，例如，作为限制条件的“自用文书”就是一个十分抽象的概念。一旦将这些不能提出的文书排除在外，就谈不上所谓提出义务一般化的问题。日本法上文书提出义务的一般化与我国目前完全没有限制的书证提出义务的一般化是无法比拟的。需要看到的是，日本和德国等大陆法系国家，文书提出义务的扩大与其诉讼体制或模式有关。大陆法系的当事人主义强调当事人的自我责任和辩论原则的适用，法院在诉讼中处于消极的地位。在日本，尽管在大正时期（1915年）依照发现真实的理念增加了职权调查制度，但在第二次世界大战之后不久，又彻底废除了职权调查制度。<sup>②</sup>由于当事人对诉讼资料，尤其是证据最为了解，并且最有收集能力，故应当尽量将证据的提出责任归于当事人，法院过度干预反而不公平。英美法系国家中有的国家，例如美国，在证据开示方面也有扩大的趋势。<sup>③</sup>但不可否认的是，正是因为强调当事人诉讼地位的平等，使得在某些现代型侵权诉讼中，因为证据偏在、信息不对称，受害人的权利难以得到救济，从而引发广泛的社会关注。在此背景下，文书提出义务扩大化成为一种应对之策，成为立法和司法实践中必须正视的问题。在诉讼法理上，强调当事人案件解明义务、诉讼协力义务、证据协力义务，实际上就是在这种语境下提出来的，有其特定的制度背景和社会背景。

作为解决当事人之间民事权利义务争议的诉讼程序，要求当事人想办法收集证据以证明自己的事实主张，这是必须坚持的原则。如果为了私益而让国家广泛介入，则必使国家逾越自己权力行使的边界。与此不同，我国尚处于从职权主义诉讼体制向当事人主义诉讼体制转型的过程中，当事人主义诉讼体制所要求的一些基本原则——辩论原则和处分原则还没有充分确立。在一审、二审及再审程序中，都还没有完成这种转型。在事实探知方面，也依然没有实现结构性转型。尽管2015年《民诉法解释》规定了书证提出义务，但没有作出实质性的限制，属于真正的、绝对的一般义务。在义务本位的法理念、法现实和传统的职权主义诉讼模式下，所有的诉讼参加人都有义务揭示案件事实，而不仅仅是个别的限定性的“案件（事案）解明义务”“协力义务”。

笔者认为，在我国，文书提出义务制度的建构不应坚持一般化，而应为义务限定化或义务特殊化。首先，要将现行的绝对一般化予以解构并转为义务特殊化或个别化，明确规定只有在某些特殊情形下当事人才负有文书提出义务。也就是说，强制当事人提出对自己不利的文书只是例外。其次，文书提出义务的具体事由应尽可能通过实体法加以规定，因为只有民事实体法才有条件和可能，根据具体情形和需要设定文书提出义务。实际上，只有根据具体情形设定权利和义务才是科学

<sup>②</sup> 参见 [日] 竹下守夫 《日本民事诉讼法的修订经过与法制审议会的作用》，《清华法学》2009年第3期，第3页。

<sup>③</sup> 参见 [美] 杰克·弗兰德泰尔、玛丽·凯恩、阿瑟·米勒 《民事诉讼法》，夏登俊等译，中国政法大学出版社2003年版，369、370页。



和合理的。甚至也可以说这些问题本身就具有实体法属性。从这个意义上讲,凡是涉及实体与程序交错的地方,程序法总是为弥补实体法规范的缺失而存在的,因为毕竟程序法的意义之一是实现实体权利。在文书提出义务方面也是如此。因此,一旦需要根据具体情形扩大文书提出义务的范围,最好通过修改实体法扩大实体权利的范围来达成目标。力图以案件事实解明义务的一般化为由割裂与实体权利义务的联系是不妥当的。在这方面,德国的做法是可行的,谨慎和现实的。<sup>④</sup>德国通说关于“双方对抗的程序样式的本质要求包括,不承担证明责任的一方既不必为查明案情出力,又不必为事实真伪不明承担不利后果”<sup>⑤</sup>的认识更容易为我们处于诉讼体制转型过程的人所理解和接受。诉讼权利只有与实体权利结合才是最可靠和坚实的。例如,在消费者保护中明确何种情形下,提供产品或服务的商家可以根据消费者的请求提出哪些与此有关的文书;在医疗侵权诉讼中,受害人可以请求加害人提供哪些与此有关的文书;在公司诉讼中,股东可以根据知情权要求公司提出哪些与此相关的文书,等等。诉讼法作为程序性规范只能作出抽象和原则性规定,无法像实体法那样做到细致化的切实、准确的规定。

还应当注意的是,当事人文书提出义务的一般化似乎能够揭示案件真实,实现诉讼资料平等、“武器平等”,但因为人的趋利性,可能造成举证人对文书提出义务的过度依赖,而放弃对书证的主动收集。如此,也将有损当事人诉讼平等原则的贯彻落实。这种强调和追求所谓实质正义的诉讼观,必然回归到义务泛化的职权主义的老路,再次扼杀刚刚生长起来的程序正义的萌芽。切不可忘记尊重当事人也是民事诉讼法的基本价值。<sup>⑥</sup>文书提出义务的一般化,看起来是建立在十分光鲜的发现真实的理念之上,但是发现真实与为发现真实的具体制度的建构,还需要考量诸多因素,否则一般化的文书提出义务将沦为空中楼阁。

## 二、文书提出义务的对象范围

### (一) 概说

文书提出义务的对象或客体为文书,《民诉法解释》将之表述为“书证”。《民诉法解释》第112条规定,书证在对方当事人控制之下,承担举证证明责任的当事人可以在举证期限届满前书面申请人民法院责令对方当事人提交。申请理由成立的,人民法院应当责令对方当事人提交。该规定在提出的对象上使用“书证”,而没有使用国外制度中“文书”的概念。笔者认为还是使用“文书”这一用语比较妥当,虽然文书作为一种证据方法就是书证,但文书是书证的载体,是书证的物质形式,书证是以文书中存在的意思或思想为内容的证据,但具体到物质或内容形态当是文书。因此在制度表述上称为“文书提出义务”更为妥当。作为一类证据的书证,一般理解为是以文

<sup>④</sup> 关于德国的做法,参见 [德] 罗森贝克、施瓦布、戈特瓦尔德《德国民事诉讼法》,李大雪译,中国法制出版社2007年版,第888、第889页。

<sup>⑤</sup> 德国学者汉斯·普维庭的这一认识代表了通说的基本观点。参见 [德] 哥特瓦尔特《对当事人释明义务的释明》,曹志勋译《清华法律评论》(庆祝清华大学法学院复建二十周年专号),清华大学出版社2015年版,第210页。

<sup>⑥</sup> 参见 [日] 伊藤真《民事诉讼法》(第4版),有斐阁2014年,第22页。

字、符号、图形等形式所记载的内容或表达的思想来证明案件事实的证据。由于我国民事诉讼法将证据分为八种法定的种类，书证作为一类证据与其他证据有明确的界分，作为相当于国外准文书的那些直接记载信息资料，包括电子数据的物件，如磁带、光盘、硬盘等就可能被纳入视听资料或电子证据的范畴，导致这些证据的提出不能适用《民诉法解释》规定的书证提出义务制度，从而影响对证据偏在问题的解决。

在提出义务方面为何限于文书，而不包括物证（其他证据不存在提出义务的问题），其原因在于，一方面是文书具有重要意义，在民事纠纷中文书往往是证明案件事实的关键证据；另一方面，是因为文书具有可复制性，尤其是作为准文书的录音、录像或电子数据更便于拷贝，不会影响当事人对文书或准文书的使用，如果是物证就有可能影响所有权人对其行使所有权的权能。

## （二）依据实体法理由应提出的文书

《民诉法解释》第112条规定中，当事人申请人民法院责令对方提交文书的“理由”就是指书证提出的原因。遗憾的是，《民诉法解释》没有进一步对文书提出的理由作出更为明确的规定。这显然是现行文书提出义务制度的一个明显的缺失。特别是在没有“法定”的原因或理由的情形下，在制度的具体实施中很容易受到书证持有人的抵制。在我国目前司法公信力不高的情形下，如无法定理由而作出文书提出命令，可能诱发对法院的不满情绪，甚至会将挑战法官的司法权威，置法官于尴尬境地。其法律效果和社会效果如何，令人担忧。

实体法上的理由，是指申请人根据实体法的规定，享有要求对方提出该书证的实体请求权或要求阅览文书的阅览请求权。例如，根据我国《公司法》第33条的规定，股东享有知情权。知情权包括查阅、复制股东有权查阅的公司有关文档，如公司章程、股东名册、董事会会议记录、监事会会议记录、公司财务会计报告、股东会会议记录、公司存根等。在涉及股东权益的诉讼中，股东作为举证人有权要求公司向法院提交该文书。<sup>⑦</sup>还应当注意的是，在德国法上，实体法上的文书提出请求权并不包括公法上的请求权。按照《德国民事诉讼法》第422条的规定，基于公法上的请求权不会产生民事诉讼中的文书提出义务。例如，根据国家行政机关信息公开的法律，任何人都可以直接向国家行政机关索要有关文书，因此，没有必要通过民事诉讼中的文书提出命令要求文书持有人提出该文书。

## （三）依据诉讼法上的理由提出的文书

### 1. 持有该文书的当事人在诉讼中提出或引用过的文书

鉴于要求提出的文书已经在诉讼中引用过，也就是说持有人愿意公开，不违反保密义务，举证人就有权要求持有人提出该文书。关于所谓“提出或引用”文书，应注意以下几点：其一，这里要求提出的文书是指其引用的部分，没有具体引用的部分应当除外。例如持有人引用的仅仅是公司会议纪要的一部分时，就不能要求提交公司纪要的全部。其二，“提出或引用”应当是指当事人的积极主动行为，而非消极被动的提出或引用。例如根据法院的要求而提出或引用；其三，这里的“引用”不包括当事人之外的第三人（即不具有当事人实际地位的第三人，例如辅助第三人）在诉讼中对文书的引用。从我国第三人制度来看，辅助型第三人因不具有当事人的地位，故该第三人在诉讼

<sup>⑦</sup> 参见施天涛《公司法论》（第三版），法律出版社2014年版，第264-265页。



中引用的文书，举证人无权要求提出。否则，如果辅助型第三人引用的文书也要由被辅助一方的当事人负担提出义务，无疑会加重被辅助当事人的责任。其四，当事人引用文书系发生于特定的阶段——“诉讼中”。我国对于证据的提出采随时提出主义，《民诉法解释》虽将其限制在一审开庭审理前的准备阶段（第 99 条），但又规定，当事人因故意或者重大过失逾期提供的证据，与案件基本事实有关的，人民法院应当采纳。因此，在我国的制度立场上，其所谓“诉讼中”引用文书，包括一审辩论终结之前，持有文书的当事人在起诉状、答辩状、代理词、上诉状以及再审申请书等诉讼文书中提出或引用过该文书。<sup>⑧</sup>从强调发挥一审庭审的功能，促进诉讼效率的角度考虑，如果原则上将证据申请限制在庭审前的准备阶段，则所谓引用的文书通常只能是在起诉后开庭审理前的这一阶段。只有如此，才能在庭审中就证据进行调查。

## 2. 文书是为申请人利益所制作的利益文书或法律关系文书

为申请人（举证人）的利益所作或属于所争议的法律关系的文书，不仅能够反映案件事实，一旦开示对于揭示案件事实有重要意义，而且考虑到文书制作的目的和特定用途，在诉讼中要求提出该文书具有正当性基础。因此，如何正确研判利益文书或法律关系文书成为文书提出义务制度合理运行的一个重要环节。

### （1）关于“利益文书”的判定

所谓利益文书，可以从两个方面加以判断。其一，该文书直接证明申请人的地位、权利、权限，或者是证明这些内容的基础；其二，制作该文书的目的是为了证明申请人的权利，或者是证明这些权利的基础。利益文书的“利益”并非仅仅指举证人利益，也包括举证人和其他相关人的共同利益。典型的利益文书，如持有人作为债务人写给申请人（债权人）的偿债承诺书。在判断是否为利益文书时，也可从制作该文书的目的和动机等主观因素出发判断是否是为了举证人以及举证人和其他人的共同利益。在实践中对于如何妥当地界定利益文书常常发生争议。例如，在涉及经济交易的纠纷中，一方持有的会计账目或商业账簿、记账单，在医疗事故侵权纠纷中的诊断记录、医疗记录、医药处方、护理记录，环境污染侵权纠纷中加害人的生产工艺流程、生产记录、化学产品配方、原材料购买记录，产品质量侵权纠纷中的产品生产记录、产品生产工艺、产品生产记录，公司诉讼中公司管理的有关记录、纪要、决议，等等文书，持有文书的当事人常常会以非利益文书为由拒绝提出。对于是否为利益文书需要从当事人的诉讼请求利益加以判断。如果这些文书涉及申请人的实际利益就构成利益文书，持有人应当提出。如环境污染侵权诉讼中，受害人主张加害人排放的废液造成损害，那么关于该加害工厂的生产规模和工艺流程就与因果关系以及损害结果有直接关联，属于典型的利益文书。

### （2）关于“法律关系文书”的判定

#### 1) 法律关系文书的含义与要件

法律关系文书是指基于举证人与持有人的法律关系而制作的文书。正是因为法律关系的文书直

<sup>⑧</sup> 大陆法系国家的德国、日本、韩国等因为对证据申请、调查程序有着比较严格的规定，当事人必须首先提出证据申请，以便法院对该证据进行调查。对于不合法的证据调查申请，法院以裁决方式予以驳回。没有提出申请调查证据的，法院不会进行调查并检证，除了自认之外，这些证据当然也不会被作为裁判的依据。参见 [日] 高桥宏志《重点讲义民事诉讼法》，张卫平、许可译，法律出版社 2007 年版，第 75-77 页。

接关联争议法律关系的事实，对于揭示案件事实具有重要意义，所以这些文书成为提出义务对象就具有正当性。典型的法律关系文书是反映申请人与持有人之间合同关系的合同文本。法律关系文书具有以下两个要件：其一，记载了举证人与持有人之间的法律关系以及相关事项。也就是说不仅指记载举证人与持有人之间法律关系的文本本身，还包括记载与该法律关系相关事项的文本。在实践中，法律关系文书与利益文书之间往往存在着交叉，例如劳动争议案件中的工作证、工资条等，既可能是利益文书，又可能是记载相关事项的法律关系文书。其二，该文书能够直接或间接表明或评价该法律关系存在与否。要件一是从记载事项的角度观察，要件二则是从证明作用的角度观察。没有证明作用也不能构成法律关系文书。法律关系文书的界定与制作人的主观认识没有关系，即使主观上仅仅是为自己使用的目的制作的文书，如涉及争议的法律关系也构成法律关系文书。<sup>⑨</sup>另外，还要注意区分法律关系文书与内部文书。单纯为持有人自己的目的所制作的文书就不是所谓法律关系文书，而是内部文书或非共通文书。两者的关键区别在于与举证人与持有人或其他人法律关系的关联性上。<sup>⑩</sup>

#### （四）义务文书的例外情形

在文书提出义务方面，我国的现行规定存在着诸多不完善之处。其中一个重要的方面，就是没有明确哪些文书不属于提出义务的范围。基于文书提出义务的限定主义，必须考量该义务与其他权利义务的关系，否则可能影响或妨碍到其他法律关系的运行和权利的行使。从国外的立法和实践来看，下列文书应当排除在义务文书之外：

##### 1. 涉及公务员职务秘密的文书

由于涉及公务员职务秘密的文书范围过于宽泛，一律除外可能会使申请人难以获得该书证证明案件事实，因此还应当加上一定的限制，即提出该文书有可能损害社会公共利益，或者提出该文书将很大程度上影响公务行为的实施。在德国、日本等大陆法系国家，因证人免证事项中也会涉及公务员职务秘密，并且有法律上的相关规定和判例，故文书提出义务中关于公务员职务秘密的判断也可以适用证人免证事项的相关规定。<sup>⑪</sup>

##### 2. 记载具有免证义务的其他人职务行为的文书

具有免证义务的人从事职务行为所产生的文书不属于应当提交的文书。例如，医生、护士、律师、公证员、宗教人员、药剂师等职业人士在职务活动中的文书。如果文书提出义务也适用于这些人职务行为的文书，就会破坏其与相对人之间的信赖关系。

##### 3. 专为文书制作人自己的利益所制作的文书

这类文书包括两类：一类是为个人的利益所制作的文书，例如日记、笔记等；一类是为了方便公司内部管理运行所制作的文书，例如公司的各种管理记录。这类文书之所以应当除外，是因为如果提出就可能妨碍制作人个人的活动自由，泄露个人隐私和商业秘密，对制作人的利益造成损害。例如，涉及交易关系、企业生产的备忘录，个人的日记，企业、单位的工作日志，合同草案、公司

<sup>⑨</sup> 参见 [日] 菊井维大、村松俊夫 《民事诉讼法（2）》（全订版），日本评论社1989年版，第620页。

<sup>⑩</sup> 参见注⑨，第620页。

<sup>⑪</sup> 参见 [日] 兼子一等 《条解民事诉讼法》，弘文堂2011年版，第1050页。

内部关于公司运营的讨论方案，等等。国家也有义务保护当事人的隐私不受到侵害，企业、团体等的组织运作不受到妨碍，尊重当事人对自用文书的处分自由。既然持有自用文书的所有权人可以自由处分该自用文书，他人也就无权要求其提出。虽然文书提出义务以揭示案件事实为其价值追求但文书提出义务的范围，同样应当受到限制。一方面，基于证据协力义务，法律关系文书应当提出，另一方面，基于保护隐私权、个人生活自由以及维护企业、团体运作便利的考虑，自用文书应当予以排除。也就是说，自用文书与法律关系文书或利益文书相对应，成了具有免除提出义务的一类特别文书。当然，实践中关于自用文书往往不像个人日记、企业日志等文书那样容易判断。理论上关于自用文书的界定主要考察三个方面：其一，文书的内部性，即文书系以持有人内部使用为目的，不向社会公开。其二，是否对持有人以及其他他人造成不利。其三，不存在特别规定应当予以公开的情形。但第一和第二方面依然存在相当大的考量余地。需要结合具体的情形或类型加以判断，理论上很难进一步划定。

4. 不属于法律上应公开的，国家行政机关、公共企事业单位基于内部组织管理所制作的文书

5. 刑事案件中的文书，以及刑事案件中被司法机关扣押或没收的文书

这类文书具体包括起诉状、答辩状、代理词、委托书、代理合同、律师与被告嫌疑人之间的谈话记录、证据及证据目录、司法机关保存的与案件有关的文书资料等。也就是说，即使这些文书为当事人持有，也不能提出。之所以不能提出，主要是因为：（1）可能涉及相关人（刑事被害人、代理人、证人等）的重大利益（包括名誉及隐私等）；（2）也可能影响尚未完结的刑事案件侦破、诉讼的公正审判等；（3）这类文书可能涉及刑事犯罪过程的细节，如果披露不仅对社会产生不良影响，也会对被害人造成精神上的损害；（4）这类文书还有可能涉及具体破案线索来源，如果披露也可能对以后刑事案件的侦破产生不利影响。<sup>⑫</sup>

### 三、不履行文书提出义务命令的法律后果

#### （一）当事人不提出文书的情形

虽然法院对书证持有人作出了书证提出的命令，但义务人依然有可能不履行提出书证的义务。按照《民诉法解释》第 112 条的规定，对方当事人无正当理由拒不提交的，人民法院可以认定申请人所主张的书证内容为真实。《民诉法解释》之所以如此规定，其原因在于，在书证持有人不履行提出义务的情形下，不仅难以通过其他强制手段使书证持有人提出书证，而且书证是特定内容的文书，无法用其他物品予以替代。

为此，《民诉法解释》规定，在不履行义务时，认定申请人主张的书证内容为真实。这一对策可以说是原来《证据规定》第 75 条的变种。虽然两者的客体范围和条件的设定有所不同，但《民诉法解释》中书证提出义务不履行的后果与《证据规定》有类似的地方。不过，前者推定成立的是主张的书证内容，而后者推定成立的是主张。显然前者的表述更为明确，后者所指的主张更为概括

<sup>⑫</sup> 参见 [日] 门口正人主编《民事证据法大系（第 4 卷各论 2 书证）》，青林书院 2003 年版，第 146、147 页。

和抽象。

文书义务不履行后果的推定必须有一个前提，就是申请人在申请书证提出命令时要明确书证的内容。有的情形下，申请人对于书证的具体内容十分清楚。例如，对于借条这种书证而言，申请人知道借条中关于借款数额、还款时间、方式等约定；对于承诺书，申请人知道所承诺的具体内容。但也有许多情形，申请人（举证人）并不清楚该书证的具体内容，仅知道该书证能证明什么，也就是证明的事实。例如，医院的护理记录、医疗记录、产品生产加工的记录、材料购买记录等。所以，如果只是简单地认定申请人所主张的文书内容为真实就没有意义。实际上，申请人要求对方当事人提出该文书是认为自己提出的事实主张可以通过该文书得到证明。而这一事实显然对持有文书的当事人是不利的，故持有文书的当事人通常不愿意提出，甚至予以销毁、遗弃。因此，在持有文书的当事人不履行文书提出义务时，应当认定申请人主张的事实为真实，而非认定文书内容为真实。

当持有文书的人不履行义务，究竟是认定申请人（举证人）主张的事实为真实，还是实行证明责任的转换更为妥当，是国外理论界争议的一个问题。按照证明责任转换的理论，持有文书的当事人如果不履行提出义务，则关于文书所证明的事实的证明责任就转换为持有文书的一方当事人，申请人不再负有证明责任，持有文书的当事人不愿意提出该文书证明该事实就要承担由此产生的不利后果。按照证明责任的分配规则，该事实的证明责任本来在申请人一方，正是因为对方当事人不愿意提出该文书，通过其他证据方法又无法证明而导致证明不能，因此，有学者认为证明责任转换的措施比直接认定申请人主张事实真实更妥当。<sup>⑬</sup>

我国目前的文书提出义务的主体仅限于当事人。在持有文书的当事人不履行法院裁定的义务时，推定申请人主张事实为真实的办法是可行的。但如果将文书义务主体扩大到当事人之外的第三人，这种办法就失去意义了。毕竟对申请人主张事实存在的推定是基于该文书对持有人不利这一经验法则，第三人与案件没有直接利害关系，而是基于其他原因不愿意履行义务。对此只能对其采取一定的处罚措施促使其履行提出义务。在国外，对持有文书的第三人履行义务的，通常措施是罚款。<sup>⑭</sup>如果今后民事诉讼法修改时设定了针对第三人的文书提出义务，这一措施也需要加以配套规定。

## （二）妨碍使用的情形

在持有文书的当事人因销毁、灭失应当提出的文书，包括删掉所储存的电子数据、磁盘、磁带中的录音、录像等时，就构成了妨碍文书使用的行为。其后果，与不履行文书提出义务一样，应当拟制认定举证人关于该文书记载内容的主张为真实。

# 四、文书提出义务命令的申请和审查程序

涉及案件主要事实的书证之有无往往决定着双方当事人的诉讼成败。基于书证对于案件事实认定

<sup>⑬</sup> 参见注⑫，第212页。

<sup>⑭</sup> 在法国，罚款这一制裁措施也可以用于持有书证但逾期不提出的当事人。参见罗结珍译《法国新民事诉讼法典（上）》，法律出版社2008年版，第27页。



的重要性，法院作出文书提出义务命令时，应当赋予当事人必要的程序保障，文书提出义务的裁判根据必须通过严密的法律审理程序才能获得。这一程序即为文书提出义务的审理裁判程序。

文书提出义务裁判程序在性质上属于一种附带程序。通常是提出书证时，向法院提出文书义务命令程序。例如《德国民事诉讼法》第 421 条明确规定，举证人断定证书在对方当事人手中时，应在申请证据时，同时申请命对方当事人提出证书。应当注意的是，文书提出义务的请求是基于实体法的请求权，则可以成为独立的诉讼标的，单独提起诉讼请求交付书证，但实际上并无单独请求的必要。除非文书提出义务命令的请求被驳回。还应当注意与文书真伪确认诉讼程序的差异。文书真伪确认诉讼程序虽然是一种特殊的诉讼程序，但却是一种独立的诉讼程序，有独立的诉讼请求和诉讼标的。与此不同，文书提出义务裁判程序不是一种诉讼程序，没有诉讼双方当事人，也没有诉讼标的。同时，文书提出义务裁判程序也不是一种独立的非讼程序。狭义的非讼程序不解决民事权利义务争议，但却是一种独立程序。申请人根据法律规定可以独立提起。

《民诉法解释》虽然规定了文书提出义务，但没有明确具体的申请、审理、裁判、不服裁判的救济程序及裁决的方式。没有这些具体程序和规范的命令方式，也就无法激活《民诉法解释》关于文书提出义务的规定，即使适用，也难以保证其顺畅运作。从国外的制度规定以及运作实践来看，关于文书提出义务命令的申请、审查应当具有以下内容：

#### （一）举证人提出申请

##### 1. 申请主体——举证人

举证人应向受理本案的管辖法院提出。这里的举证人为诉讼当事人，不是诉讼当事人没有申请的利益。“举证人”之所以成为申请主体，是因为该当事人对书证要证明的事实负有证明责任。如果不负有证明责任，该当事人就没有必要向法院请求命令持有文书的人提出该文书。

##### 2. 被申请人的范围

文书提出义务的被申请人是持有文书的当事人。不过这里的“当事人”是广义上的概念，包括诉讼的原告、被告、有独立请求权的第三人以及无独立请求权第三人中的被告型第三人（可判定承担民事责任的第三人）。

##### 3. 文书对象的特定与举证人的特定责任

举证人向法院申请文书持有人提出书证，在程序上应当要求对该文书对象予以特定化，否则可能因为文书对象泛化而无谓地增加义务人的负担，甚至损害义务人的利益。所以举证人在申请文书提出命令时，负有将文书特定化的责任。文书的特定应达到何种程度是一个值得研究的问题。在日本民事诉讼法中是通过申请人关于文书的标示（表示）和内容要点（趣旨）对文书予以特定化。例如，文书的类别、文书的名义人、制作日期、文书的标题等。<sup>⑤</sup> 如果申请人能够指明文书的标示和内容自然能够使文书特定化，例如，双方之间的关于特定事项的合同文本、企业某次会议纪要或记录、医院针对患者的医疗记录或处方等。但实践中，往往因举证人没有参与文书的形成过程，也不了解文书形成的实际情形，故难以明确文书的种类和名称，或其他标示。因此，严格要求申请人必须指明文书标示和文书内容要点会影响文书的提出。实际上只要申请人对于文书的描述能够使文

<sup>⑤</sup> 参见 [日] 兼子一等 《条解民事诉讼法》（第 2 版），弘文堂 2011 年版，第 1221-1222 页。

书义务人明确所要提出的文书，即使关于文书的标示具有一定的抽象性或模糊性，也可满足文书特定化的要求。《日本民事诉讼法》第222条规定，在明确文书标示和文书要点存在显著困难时，申请人于申请时仅需明确“可使文书持有人能够识别该被申请的文书的事项”即可。为了使文书能够特定化，《日本民事诉讼法》还专门规定了文书特定程序（1996年日本修改民事诉讼法时在文书提出命令制度中增加了这一程序）。这一程序与文书提出命令程序的关系是，如果申请人指明了文书的标示和内容要点，就无需提出文书特定程序。相反，如果文书的标示和内容要点较为抽象和模糊不清，则需要通过特定化程序予以特定。这一程序的设定是为了避免加重义务人文书提出的负担。

#### 4. 义务文书提出的利益（必要性）

除了要符合文书提出的要件，还存在着是否有必要提出的问题，此即文书提出的利益，类似于诉的利益。文书提出的利益考量主要是为了衡平和协调文书提出中证明要求与提出负担之间的关系。换言之，虽然符合法律对文书提出义务的要件规定，但也需要从必要性角度具体把握是否提出文书。这一判断属于司法裁量的范畴。如果不对文书提出的利益作出要求，就可能导致举证人完全放弃自行收集证据，而将证据收集的负担和成本完全转嫁给对方当事人。文书提出利益可从以下几个方面来把握：（1）文书与待证主要事实的关联性以及关联程度。如果文书与案件主要事实没有关联或关联性程度很小（例如，工程建筑设计图与工厂废水排放数量或规模就可能没有多大关联性），则再结合其他因素即可判断可能不具有提出的利益；（2）文书提出不至于给持有人造成过大的负担。因为提出负担不仅是经济成本问题，也包括时间和精力消耗；（3）可以依据其他法律、法规的规定获得原件或复制件。例如关于房产登记簿、土地使用证、工商登记资料的相关文书；（4）该文书是否可以很容易从持有人处获得，例如通过复印就可以获得，也就没有必要非要通过文书命令的方式提出该文书。<sup>⑩</sup>一般情形下不会发生文书提出利益的争议，因为文书提出的利益或必要性通常在要件中已经有所包含。对文书提出利益的质疑往往源于对提出要件的理解。对文书提出利益或必要性发生争议时，申请人应当承担证明责任。

#### 5. 书面申请书的提出及记载事项

文书提出义务的申请形式为书面申请。申请书应写明文书持有人（持有人的身份、住所地等可以保证送达文书提出命令的信息）、文书名称、文书内容概要、文书证明的事实、提出该文书的理由等。如果申请书没有记载相关事项，除了文书持有人、文书的内容概要可以在以后补充、完善之外，法院将驳回举证人关于文书提出义务的申请。书面记载事项中最关键的是文书标示和文书内容要点。在不能明确记载文书标示和文书内容要点时，就需要通过启动一定的程序对申请提出的文书予以特定化。例如，日本文书提出命令制度中的文书特定程序。因此，是否设定这一程序也是我国文书提出义务制度所需要考虑的问题。

#### （二）文书提出义务的审理与文书非公开确认程序

在文书提出义务的审理中，必然涉及文书提出义务要件的判断问题，尤其是关于是否存在提出义务的免除情形的判断。这是审理文书提出义务争议的关键之处。申请人主张文书持有人负有提出义务，文书持有人往往令以具有免提事项加以抗辩。虽然审理法官可以要求持有人将抗辩事实具体

<sup>⑩</sup> 参见注⑤，171-173页。

化,但也同样会因为提出该事实本身会涉及商业秘密、职业秘密、个人隐私等理由而遭到拒绝,以至于无法判断文书持有的特定情形是否属于免提事项。为了应对此种情形,日本在 2001 年修改文书提出命令制度时移植了英美法中的“非公开审理”程序(in camera,日语“イン・カメラ程序”)。<sup>⑭</sup>“非公开审理”(in camera)程序,是来源于拉丁语的法律英语词汇,广泛应用于英美法国家的刑事、民事和行政案件的诉讼中。这一程序是指当对方当事人或第三人以涉及商业秘密、国家机密、免于披露的特权事项等事由拒绝提供自己持有的文书时,一方当事人为获取该秘密的、敏感的文书以证明己方主张的诉讼请求或重要事实,请求法院在法官办公室等庭审之外的私密空间审查该文书,以决定文件是否以及在多大范围内可以让申请人(举证人)使用或者公之于众的程序。申请人必须描述该文书的基本特性,提出非公开审查的理由和法律根据,经法庭事先批准后,可以命令被申请人提交该文书。法官不必审查所有文件,可以围绕争议在合理范围内抽取文件的若干样本审查,该文书不会记录在法庭案卷卷宗中,法官有充分权力决定禁止使用、限制使用还是公开文书,并有权命令一方当事人采取所有必要措施对准予使用的信息保密。在美国各州法庭规则、美国注释法典都可见到有关 in camera 程序的规范,如《加利福尼亚联邦法庭规则》第 79 条第 6 款、《加利福尼亚证据法典》第 1042 条(d)款等。但是,非公开审理程序也面临违反英美法要求在公开法庭上提供证据、在诉讼对抗中裁决争议的司法传统,剥夺当事人请求公开审判的基本权利,以及法官在披露文书时仍然能够获得不合理的心证等诸多质疑,因此非公开审理程序的适用也受到严格限制,只有在确有必要且不侵犯当事人基本权利时才可使用。<sup>⑮</sup>

根据《日本民事诉讼法》第 223 条第 6 项的规定,凡是涉及该法第 220 条第 4 款规定的事项之一的,可以要求文书持有人将该文书提交法院进行阅览,以便法院作出是否应当予以提出的判断。由法院阅览的这些文书不能向其他人包括申请人开示。这一程序被称为“非公开确认程序”。在一般情形下,对于是否存在《日本民事诉讼法》第 220 条第 4 款规定的情形的判断应当通过非公开确认程序予以确定。但人们对非公开确认程序也存在这样的质疑,即法官通过阅览非公开的文书之后就已经获得了心证,以这种心证为基础对本案争议作出判断未必具有合理性。因为对文书的阅览只有法院自己,而当事人并不在场。这里不仅涉及裁判公开的问题,也涉及双方当事人诉讼平等的问题。裁判公开包括法院心证根据的公开。这一问题实际上纠结的是裁判公开与相关利益维护之间的紧张关系。为了平衡这一关系,日本有关法律(例如专利法)规定,在法院认为有必要时,可以将有关文书向当事人等公开,询问这些人的看法,最终决定是否应当作出文书提出命令,将如何平衡这种紧张关系的处置权交给法院裁量。在日本的专利诉讼中,法院根据具体情形给予申请人对文书持有人主张的免提理由提出反驳的机会。同时为了保护秘密,法院将向当事人等有关人员发出秘密保护令,禁止当事人等向诉讼外的其他人披露文书的有关信息。<sup>⑯</sup>另外,可以通过协商的方式确认是否需要公开确认,只有在双方不能达成合意时,才由法院根据具体情形裁量决定是否公开。

<sup>⑭</sup> “イン・カメラ”作为一种审查方式,也有的译为“非公开审理程序”(考虑到这种程序只是文书提出命令审理方式的一个环节,主要是一种确认程序,因此本文译为“非公开确认程序”)。

<sup>⑮</sup> 有关英美法国家非公开审理程序的资料由清华大学法学院博士研究生曹建军提供。

<sup>⑯</sup> 关于日本文书提出命令制度的非公开确认程序及理论与实践的情形,参见注⑫,第 180-187 页;注①新堂幸司书,第 420、421 页。



非公开确认依然是一般原则。

在人们的权利意识不断强化的当下，我国民事诉讼文书提出义务制度的建构，无法回避文书非公开确认问题。在这个方面，英美法以及日本法的相关制度及实践值得我们关注和借鉴。笔者倾向于借鉴国外的制度设计，在文书提出义务的审理程序中涉及免提事由的判断时，原则上应当采取非公开确认的方式。考虑到知识产权诉讼案件对于技术秘密的保护具有重要的意义，在涉及商业秘密的案件中根据具体情形，配合秘密义务的设定，予以公开确认。

### （三）文书存在与对文书持有的证明责任

要求文书持有的当事人提交文书，其前提是应当提交的文书存在，并为被申请的当事人所持有。但在实践中对于该文书是否存在并为该当事人持有常常会发生争议。这里涉及如何理解持有以及关于文书存在与否争议的证明责任问题。所谓“持有”，应当理解为当事人对文书的控制支配，即使该文书并不在当事人的实际占有之中，但该当事人可以支配转移就属于持有的状态。对于应当提出的文书的存在以及为当事人所持有，申请提出文书的当事人应对其提出证据加以证明。被申请的当事人主张该文书已经废弃、灭失、毁损、转移的，应当对此承担证明责任。如果不能证明，导致废弃、灭失、毁损、转移的事实真伪不明时，就要承担相应的不利后果，即发生不履行提出义务的法律后果。如果原件废弃、灭失、毁损、转移，但当事人持有复印件、复制件的，该文书同样应当提交。

### （四）文书提出义务的裁判

法院经审查认为符合文书提出条件的，可作出文书提出义务命令的裁定。需要说明的是，虽然举证人申请的是文书提出义务的命令，但法院是否发出命令采用裁定形式，也就是说裁定的内容是命令。裁定书应当写明申请人、文书持有人、申请提出的文书及范围、申请理由、裁定主文、不服裁定的救济方式。申请成立的，裁定主文通常为命令文书持有人于何时提出何文书。裁定认为仅有提出部分文书的必要的，可以就该部分文书发出提出命令，但不能超出举证人申请提出的范围。

### （五）对提出命令裁定的程序救济

举证人或持有人可以在裁定作出后一定的时间内提出异议，请求撤销或改变许可提出或驳回请求的裁定。由于文书提出义务关系到申请人（举证人）和文书持有人的利益，因而，应当允许申请人（举证人）、持有人对文书提出义务的裁定提起异议，防止正当请求不能实现或不正当的请求损害文书持有人的利益。对文书提出命令的裁定不服的也可以采用复议程序。在法院作出裁定之后一周内向作出该裁定的法院或上一级法院提出复议申请。究竟采本院复议还是上级法院复议，存在立法上的选择问题：如果顾忌效率，则可以考虑向本案法院申请复议；如果强调救济的实效性，则选择向上一级法院申请复议。提出复议后，法院在一定期间内对复议进行审查并作出最终裁定。应当注意的是，对于驳回申请人请求的裁定，因为对被申请人（文书持有人）没有复议的利益，所以被申请人不能提出复议；相反，对于认可提出文书义务请求的裁定，申请人也没有复议的利益，也不能对其提起复议。申请复议之后，复议法院经过审理可作出维持、撤销原裁定的裁定。该裁定自送达之日起生效。

## 结 语

基于民事纠纷的基本特点，在我国民事诉讼中，以事实为根据、发现真实、促进诉讼效率、实现诉讼形式平等和实质平等、尊重当事人意愿等诉讼原则都需要通过具体的制度予以落实，而这些制度的建构必须考量原则、理念、权利等多重关系的平衡和协调。文书提出义务制度的建构也同样如此。《民诉法解释》规定的绝对一般化的文书提出义务，须对文书范围作出具体的限定，对文书提出申请的审理和救济作出完整的程序规定，否则要么无法适用，要么被滥用。笔者坚持我国文书提出义务应当采用限定主义，而且原则上应当以实体法的规定为依据，毕竟实体法有条件为这种义务设定作出精确的考量。作为例外，程序法也要作出规定，但是程序法的规定具有辅助性、补充性。除了持有文书的当事人在诉讼中引用过的文书之外，对于利益文书和法律关系文书都要有相应的限制，这一点应当在规范中加以明确。虽然其具体内容难以在规范中加以表述或规定，但可以通过学理解释和指导案例逐步清晰。文书提出义务制度的建构必须考虑我国当下的诉讼体制转型现实，法治阶段的初级性和国家法治方式的转型现实。

最后需要指出，从文书提出义务制度建构的必要性和紧迫性来看，《民诉法解释》虽然颁布实施不久，但从实践来看，又到了需要再次修改的时候。这就是中国社会发展的现实。制度建构的急躁、粗疏，实践推动型的法治发展规律，决定了我国频繁修法的必要性。现在，是时候拆除装饰的围栏，构建起扎实的制度主体，着力推进民事程序法治的建设。

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***Institutional Construction of the Party's Duty of Producing Documents***

ZHANG Weiping • 31 •

Documents, which belong to documentary evidence, play an important role in revealing facts in civil proceedings. But according to the principle of the party producing evidence and proving facts, while documents are in possession of the opposite party, the possessor is unwilling to put forward them and let the certifier get them because these documents may be detrimental to the possessor or the cost of producing documents is high. Thus evidence can not be discovered in debate procedure and judgment can not be made on the basis of enough facts. On the other hand, although the party possessing documents can be compelled to put forward documents by law from the idea of finding truth and achieving equity in litigation information, this method without restriction may damage many rights of the possessor, affect normal operation related to the processor's affairs, and deny the parties' burden of producing evidence. Therefore, the duty of producing documents must be limited and case specific in principle. Even though there are legal provisions about the duty of producing documentary evidence in the Interpretations on the Application of the Civil Procedure Law at present, express restrictive provisions are missing, and there also lacks corresponding procedure of application, trial, adjudication and relief, which influences the legitimacy and effectiveness of this institution's operation. This thesis carries out relatively detailed and in-depth research on the basic framework, the scope of documents and procedural problems of the duty of producing documents. The research of this thesis is believed to have great reference value for the institutional construction and practice of the party's duty of producing documents in our country's civil action.

**Key Words** Civil Procedure; Burden of Producing Evidence; Documentary Evidence; Duty of Producing Documents; Disclosure Obligation of Case

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***The Trichotomy of Administrative Procedure Defect and Judicial Review***

LIANG Junyu • 45 •

Under the background that the administrative procedure code is absent, the types of administrative procedure defect are regulated by the new Administrative Litigation Law of the People's Republic of China. The new Administrative Litigation Law divides administrative procedure defects into "the violation of legal procedures" and "procedural minor illegality", but seriously ignores the third type which has a large number in the judicial practice: the claims pointed out and dismissed by the court instead of being revoked or confirmed as illegality. After introducing "the narrow procedural defect" so as to form trichotomy, it is necessary to add the legal consequence of "negligible (as lawful as regarded)" at the institutional level. Meanwhile, in order to optimize the decisions for administrative procedure defect, besides excluding the application of part-cancellation judgment, querying the legitimacy of unlimited remaking judgment and opposing to add supplement judgment as the auxiliary judgment of illegal affirmation judgment, we should prevent the court from frequently making claim-dismissed judgment based on recognizing "the narrow procedural defect" widely. Therefore, we should make the prerequisite of applying claim-dismissed judgment as both following ones: the degree of violation is minor; the administrative organ implements a meaningful correction actively.

# **Exhibit B-14**

# 我国反垄断民事诉讼证据开示制度的构建:理据与路径

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内容提要:“证据偏在”问题在反垄断民事诉讼中广泛存在且较一般的民事诉讼问题更为突出。证据开示制度正是矫正这一缺陷的根本制度设计。我国民事诉讼法相关制度设计存在不足,也不能适应复杂的反垄断民事诉讼。我国无论实体法还是程序法与大陆法系更为接近,欧盟证据开示制度更具有借鉴意义。在一般民事诉讼证据开示规则之外,单独设立反垄断民事诉讼证据开示规则,是我国反垄断民事诉讼的必然选择。即以民事诉讼法证据开示制度为框架,以法院为中心创设反垄断民事诉讼证据开示制度,围绕证据开示的启动程序、适用条件、对象范围及对违反证据开示的制裁等方面设计该制度。

关键词:反垄断 民事诉讼 证据偏在 证据开示

我国《反垄断法》实施至今已有十余年,全国各级法院审理了一系列具有影响力的反垄断民事案件,反垄断民事诉讼已成为《反垄断法》实施不可或缺的组成部分。但反垄断民事诉讼尚存一些薄弱环节和突出问题,其中最值得关注的问题之一就是取证难和证明难,这已成为制约反垄断民事诉讼的重要瓶颈。在司法实践中,由于垄断行为的证据大多由被诉垄断行为人持有,即存在严重的“证据偏在”问题,在既有民事诉讼“谁主张,谁举证”的举证责任分配框架内,原告的较高败诉率几乎不可避免。<sup>①</sup>而

我国《民事诉讼法》及相关司法解释之制度设计并不能矫正反垄断民事诉讼领域的这一关键问题。如何解决反垄断民事诉讼当事人在证据收集上的信息不对称问题,已成为一个亟须研究和解决的重要课题。

## 一、反垄断民事诉讼证据开示制度概述

### (一) 证据开示的内涵

证据开示是滥觞于英国衡平法实践的一项重要制度,其创设初衷在于遏制民事诉讼中的“证据突袭”现象。而后美国1938年颁布的《联邦民事诉讼规则》对证据开示作了规定,并

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① 参见朱理《反垄断民事诉讼十年:回顾与展望》,载《中国知识产权报》2018年8月24日第8版。



明确了证据开示制度的主要内容和操作规则,证据开示制度逐步为其他国家和地区所吸收和采纳。

何谓“证据开示”,学者见仁见智。根据《布莱克法律词典》,证据开示是指“根据当事人的要求,强制披露与诉讼有关的信息(原告提出一项要求强制取证的动议)”<sup>②</sup>。按照《牛津现代法律用语词典》的定义,证据开示是指“案件中的当事人,应对对方当事人的请求,披露有关案件的事实或文件”<sup>③</sup>。而《朗文法律词典》则指出,证据开示是“用来指一方当事人披露自己占有或控制的与民事诉讼相关的文件的术语”<sup>④</sup>。据此可以看出,上述定义对证据开示制度的概括大体上是一致的,即该制度的核心要旨是在民事诉讼中,一方当事人向另一方当事人披露有关案件信息,但在开示方式是主动开示还是被动开示上存在差别。在笔者看来,结合证据开示制度的理论溯源及既有立法和实践,广义的证据开示包含了这两种方式。具体到反垄断民事诉讼证据开示制度,即在反垄断民事诉讼中,双方各自主动向对方出示证据,或者一方当事人要求对方当事人及案外人出示其所掌握的证据,以获得证据、交流案件信息的程序和制度。

## (二) 域外反垄断民事诉讼证据开示制度介绍

为了克服当事人的信息不对称以及原告获取掌握在被告或者第三方手上证据的实际困难,促进反垄断民事诉讼的发展,许多国家和地区都规定了反垄断民事诉讼证据开示制度,<sup>⑤</sup>其中以美国和欧盟最为典型。

美国是世界上反垄断民事诉讼制度最完善

的国家,其证据开示制度已成为很多国家的模板。根据证据开示方式的不同,证据开示分为主动开示(Disclosure)和被动开示(Discovery)两种,前者是一种义务性程序,不管开示的内容对当事人是否有利,皆要求当事人自行披露有关信息和证据。美国证据开示的范围相当宽泛,几乎涵盖了与民事诉讼相关的所有信息和证据。美国诉讼模式为对抗制,法院在证据开示问题上赋予当事人及其代理人充分的自由空间,不管是证据开示的时间节点还是证据开示的具体事项,都由当事人及其代理人自行商定,大多数情况下法院只是起到监督和管理的作用。通过双方当事人及代理人的对抗性证据展示,能够最大程度地还原事实真相。

为解决反垄断民事诉讼中的“证据偏在”问题,欧洲议会和理事会于2014年11月26日通过了第2014/104 / EU号指令——《关于违反欧盟及其成员国竞争法规定的侵权损害赔偿诉讼规则》(以下简称《损害赔偿规则》)<sup>⑥</sup>。《损害赔偿规则》第二章专章规定了证据开示制度,确立了证据开示的条件、范围、竞争执法机构案卷材料开示的特殊规定以及对违反证据开示规则的制裁等。欧盟相关制度设计是基于职权制的诉讼模式,不管是《反垄断法》还是后期出台的各种配套法规,都有浓重的欧盟竞争法的影子。<sup>⑦</sup>在大陆法系中,认定事实和适用法律是司法之功能与责任的核心,证据调查之权力应当由司法机关独自享有和行使,不应当授予当事人证据调查权利,这种思想观念已根深蒂固,致使大陆法系国家普遍没有规定证据开示制度。<sup>⑧</sup>为了解决反垄断民事诉讼中的“证据偏在”问题,推动反垄断民事诉讼的发展,欧盟委

② See Black's Law Dictionary, 8th Edition, Thomson West, 2004, p. 1403.

③ 《牛津现代法律用语词典》,法律出版社2003年版,第31页。

④ 《朗文法律词典》,法律出版社2002年版,第26页。

⑤ 参见陈灿祁《欧盟反垄断民事诉讼中的证据开示研究》,载《湘潭大学学报(哲学社会科学版)》2016年第2期。

⑥ See on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, available at [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0104#ntr1-L\\_2014349EN.01000101-E0001](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0104#ntr1-L_2014349EN.01000101-E0001), last visited on 14 August 2019.

⑦ 参见李剑《中国反垄断法实施中的体系冲突与化解》,载《中国法学》2014年第6期。

⑧ 参见黄国昌《民事诉讼理论之新开展》,北京大学出版社2008年版,第46页。

员会一直致力于引入证据开示制度,并颁布了一系列的政策法规,逐步在欧洲范围内建立起了反垄断民事诉讼证据开示制度。与职权主义的诉讼模式相对应,欧盟证据开示制度更加强调法院的主导地位,对证据开示的范围、条件及由此取得的证据的使用作了诸多限制。

我国与大陆法系更为接近,欧盟成员国大多为大陆法系国家,它们的反垄断民事诉讼证据开示制度大都基于欧盟法有关规定而建立,实体法与程序法的相似性为借鉴欧盟的证据开示制度提供了重要参考,欧盟反垄断民事诉讼证据开示制度之于我国的可借鉴性很强。因此,有必要仿效欧盟证据开示制度,在一般民事诉讼证据规则之外单独设立反垄断民事诉讼证据开示规则,以此赋予一方当事人从另一方当事人或者第三方处收集证据的权能,矫正反垄断民事诉讼中因“证据偏在”问题所引发的取证难和胜诉难问题,即由于存在信息不对称的情况,导致原告往往难以获得被告违反反垄断法的证据,因而无法向法院提起诉讼或者即便能够起诉也会面临败诉的困局。<sup>⑨</sup>为了契合以法院为主导的既有调查取证模式,可在明确开示条件和范围的情况下,采用“申请+批准”模式,即当事人想要从另一方当事人或者第三方处收集证据,需要先向法院提出书面申请,而不宜像美国法院一样由当事人主导。

当然,虽然我国与归属于英美法系的美国法在民事诉讼制度上有着显著差别,但这并不影响我们合理吸收和采纳其精华,因为证据开示等证据规则具有明显的技术工具特征,其开放性和融通性更强。大陆法系反垄断民事诉讼证据开示制度正是在职权主义诉讼模式基础上,引入证据开示制度并相应作出符合职权制

的更改而形成的。

## 二、构建我国反垄断民事诉讼证据开示制度的必要性

### (一) 现行民事诉讼证据开示制度之不足

我国司法机关一直致力于解决举证难问题,在司法解释中引入了证据开示制度。2002年实施的《最高人民法院关于民事诉讼证据的若干规定》(以下简称2002年《民事证据规定》)规定了证据交换制度与举证时限及证据失权制度,从而确立了证据开示制度在我国的程序地位。2015年施行的《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》(以下简称《民诉法司法解释》)及2019年颁布的《最高人民法院关于民事诉讼证据的若干规定》(以下简称2019年《民事证据规定》)又对举证时限及证据失权制度进行了一些修改,但总体保留了证据主动开示的原貌。我国证据交换程序是以英美法的审前会议制度为形式模板,属于主动的证据开示制度,其主要完成对案件涉及证据的全面展示和交换,并明确案件的争议状态。由于我国《民事诉讼法》《民诉法司法解释》对证据失权基本持否定态度,<sup>⑩</sup>因此证据的主动开示往往流于形式。特别是当事人一般不会主动开示对己方不利的证据,因此证据交换等规定虽然也适用于反垄断民事诉讼,但对缓解反垄断民事诉讼领域当事人举证能力不足的问题鲜有助益。

2002年《民事证据规定》规定了当事人的“证据提出义务”,<sup>⑪</sup>这是对当事人被动证据开示的间接规定,但距离文书提出义务制度的充实和完善还有很大的差距。<sup>⑫</sup>《民诉法司法解释》以及2019年《民事证据规定》对此又进一

<sup>⑨</sup> 参见林燕萍、俞胜杰《〈关于违反欧盟及其成员国竞争法的损害赔偿诉讼若干规则的指令〉之评析与借鉴》,载《政治与法律》2016年第1期。

<sup>⑩</sup> 我国《民事诉讼法》第65条规定“当事人逾期提供证据的,人民法院应当责令其说明理由;拒不说明理由或者理由不成立的,人民法院根据不同情形可以不予采纳该证据,或者采纳该证据但予以训诫、罚款。”

<sup>⑪</sup> 2002年《民事证据规定》第75条规定:有证据证明一方当事人持有证据无正当理由拒不提供,如果对方当事人主张该证据的内容不利于证据持有人,可以推定该主张成立。

<sup>⑫</sup> 参见张卫平《当事人文书提出义务的制度建构》,载《法学家》2007年第3期。



步细化,<sup>⑬</sup>被动证据开示的范围仅限于书证,且对具体的申请、审理、裁判、惩罚性后果等予以明确。上述一系列规定在相当程度上缓解了反垄断民事诉讼举证难问题,但将提出义务的客体限定为“书证”,存在适用范围较窄和证明妨碍适用条件过高的问题,适用上还存在一定局限性。<sup>⑭</sup>并且上述规定过于笼统,不足以应对复杂的反垄断民事诉讼。

(二) 举证责任倒置规则并非为解决举证难的妥当之策

一般而言,民事诉讼应当考虑待证事实属于哪一方当事人控制的危险领域、待证事实发生的盖然性高低,依据实体法确定的责任或者损害归属原则等因素确定原被告双方的举证责任分配。<sup>⑮</sup>由于反垄断民事诉讼中原、被告的地位悬殊,原告在收集证据方面处于天然的弱势地位,不少学者对该类诉讼目前的举证责任分配规则持批判态度,认为该类诉讼之所以存在原告胜诉率低的情况,原因就在于现有举证责任分配规则并不合理,主张对原被告之间的举证责任进行重新分配,实行举证责任倒置。<sup>⑯</sup>笔者以为,上述观点存在对民事诉讼举证责任分配一般原则和《最高人民法院关于审理因垄断行为引发的民事纠纷案件应用法律若干问题的规定》(以下简称《反垄断法司法解释》)中举证责任分配规定的理解误差,僵化地套用“谁主张、谁举证”的规则,认为原告举证难的原因在于其举证责任过重,举证责任分配不合理,而未注意到真正的举证难在于证据收集难。<sup>⑰</sup>如果对涉及垄断行为的民事诉讼纠纷实行举证责任倒置,则可能又会导致对被告的重大不公,原告

起诉后可能不需要提供任何证据即可能胜诉,而这将严重悖离司法公正,并且也极易导致反垄断民事诉讼的滥诉。正因如此,在民事诉讼领域,只有极端例外的情形下才可适用举证责任倒置规则。《反垄断法司法解释》规定除了我国《反垄断法》第13条明确列举的垄断协议适用举证责任倒置规则外,其他垄断行为仍然适用一般的举证规则。当然,这并未解决其他反垄断民事诉讼案件当事人证据能力不平衡的问题,其根源在于《反垄断法司法解释》缺乏从证据收集的角度消除当事人证据地位不平衡的规定。而证据开示制度则是从证据收集的角度保障反垄断诉讼的公正审判,被诉垄断行为人需要向原告披露与诉讼有关的证据和事项,拒绝披露将承担不利后果,由此可以有效解决因诉讼地位失衡而引致的举证不能问题,这种举证难度的减轻是通过对取证权利和义务的合理配置来实现的,即对掌握有大量证据材料的被告课以协助原告取证的义务,从而减轻原告的举证负担。<sup>⑱</sup>

(三) 反垄断民事诉讼中的“证据偏在”问题更为突出

“证据偏在”是指由于当事人身份地位的差异,使得揭示案件事实的重要证据往往被控制在一方当事人或者第三方手中。<sup>⑲</sup>就反垄断民事诉讼而言,“证据偏在”更是一种极为普遍且愈发严重的现象。例如,经合组织(OECD)于2015年召开的“反垄断公共执行与私人执行的关系”竞争政策圆桌论坛就指出,反垄断案件不仅具有事实密集型特征,而且还存在结构性信息不对称的特征,因为通常支持私人赔偿

<sup>⑬</sup> 参见《民事诉讼法司法解释》第112-113条,2019年《民事诉讼证据规定》第45-48条。

<sup>⑭</sup> 参见袁晓磊《论滥用市场支配地位私人诉讼之举证困境及对策》,载《中国政法大学学报》2019年第4期。

<sup>⑮</sup> 参见李汉昌、刘田玉《统一的诉讼举证责任》,载《法学研究》2005年第2期。

<sup>⑯</sup> 参见王伯潇《反垄断私人诉讼的实践困局与路径再勘——以司法解释施行后的实证经验为中心》,载《宁夏大学学报》(人文社会科学版)2015年第1期;李国海《我国反垄断民事诉讼举证责任分配制度之检讨——以典型案例为样本》,载《吉首大学学报》(社会科学版)2019年第1期。

<sup>⑰</sup> 参见袁晓磊《论滥用市场支配地位私人诉讼之举证困境及对策》,载《中国政法大学学报》2019年第4期。

<sup>⑱</sup> 参见蔡锦青《我国反垄断私人诉讼中实行证据开示制度的探讨》,北京交通大学2012年硕士学位论文,第29页。

<sup>⑲</sup> 参见孙晨曦《论民事诉讼当事人证据收集手段之扩充》,载《社会科学家》2019年第4期。

请求的证据信息往往由被告所掌握,而竞争执法机构的相关文件中的特定信息又是受保护的,不能对外披露。<sup>②①</sup>笔者以涉及垄断协议和滥用市场支配地位的民事诉讼纠纷为例,对此予以阐释。

一是在涉及垄断协议的民事诉讼中,因垄断协议是私底下达成并实施的,除了该协议的当事人之外,第三方很难获取与此协议相关的信息或者资料,导致出现“证据偏在”问题。事实上,正是垄断协议具有隐蔽性强、探测成本高等特点,各司法辖区大都规定了垄断协议宽大制度,即对主动告发垄断协议的参与者免除或者减轻、从轻处罚,以此使得执法机关能够及时发现案件线索和相关证据,有效查处垄断协议行为。<sup>②②</sup>根据国际竞争网络(ICN)的问卷调查结果,在参与调查的50个司法辖区中,就有35个司法辖区的执法机构采用垄断协议宽大制度。<sup>②③</sup>研究发现,至少四分之三的国际卡特尔都是通过宽大制度发现的,即从该国际卡特尔的告发者处取得案件线索和相关证据。<sup>②④</sup>由此可见,要想证明垄断协议通常需要获得书面或者口头证据,而垄断协议的隐蔽性又使之难以获得,对于具备更强信息渠道与调查手段的反垄断执法机构而言,尚且需要通过激励措施来获取垄断协议证据资料,考虑到原告在收集证据能力方面与之相去甚远,要想在个案中成功获取垄断协议有关情况和证据资料,其难度可想

而知。目前,尽管大多数司法辖区针对被诉垄断协议适用举证责任倒置规则,<sup>②⑤</sup>但这只是减轻了原告的证明责任,并没有解决“取证难”问题,如何获取垄断协议有关证据仍然是摆在原告面前的首要难题。

二是在涉及滥用市场支配地位的民事诉讼纠纷中,对于相关市场界定、市场支配地位认定、滥用行为的证成等事实的认定,相关证据往往掌握在被诉垄断行为人手中,在缺少证据开示的情况下,不管是原告还是法院都很难获取与此相关的信息和资料。例如,在“华为诉IDC滥用市场支配地位纠纷案”中,为了证明IDC滥用其在所涉标准必要专利许可市场的支配地位并实施过高定价,在IDC与其他被许可人将许可费约定为商业秘密的情况下,它拒绝披露其与苹果、三星等公司签订的标准必要专利使用费率合同,法院和华为无法从IDC或者他处获悉这一至关重要的信息,只能另辟蹊径继续取证。所幸IDC作为上市公司负有年度信息披露义务,华为最终通过查阅IDC公布的上市公司年报推算出上述信息,如此方才证成IDC实施了过高定价行为。<sup>②⑥</sup>对此,该案的一审法官更是专门撰文质疑“标准必要专利权人与标准必要专利实施者之间约定的关于标准必要专利使用费率保密条款的有效性”。<sup>②⑦</sup>事实上,几乎在滥用市场支配地位行为的每一个环节上,

<sup>②①</sup> See executive summary of the roundtable on the relationship between public and private antitrust enforcement, DAF/COMP/WP3/M (2015) 1/ANN3/FINAL, June 2015, available at [https://one.oecd.org/document/DAF/COMP/WP3/M \(2015\) 1/ANN3/FINAL/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3/M (2015) 1/ANN3/FINAL/en/pdf), last visited on 2 August 2019.

<sup>②②</sup> 例如我国《反垄断法》第46条第2款规定“经营者主动向反垄断执法机构报告达成垄断协议的有关情况并提供重要证据的,反垄断执法机构可以酌情减轻或者免除对该经营者的处罚。”

<sup>②③</sup> See Scott Hammond, Deputy Assistant Att’y General for Crim. Enforcement, Antitrust Div., Depart. of Justice, Trends and Developments in Cartel Enforcement, Presentation at The 9th Annual Conference of the International Competition Network (ICN), 2010, p. 5.

<sup>②④</sup> See John M. Connor, Cartel Amnesties Granted, Worldwide Whistleblowers, May 20, 2009, available at <https://ssrn.com/abstract=1285469>, last visited on 3 August 2019.

<sup>②⑤</sup> 例如《反垄断法司法解释》第7条规定“被诉垄断行为属于反垄断法第十三条第一款第(一)项至第(五)项规定的垄断协议的,被告应对该协议不具有排除、限制竞争的效果承担举证责任。”

<sup>②⑥</sup> 广东省高级人民法院(2013)粤高法民三终字第306号民事判决。

<sup>②⑦</sup> 参见祝建军《标准必要专利使用费条款:保密抑或公开——华为诉IDC标准必要专利案引发的思考》,载《知识产权》2015年第5期。



原告都可能会碰到取证难的问题,因为市场份额计算、竞争损害评估等分析过程,既涉及到涉案企业经济行为和经济数据的收集,也涉及到行业相关数据的收集、加工和处理;既有传统定性分析方法的应用,也有更为现代的定量分析方法的应用,<sup>②7</sup>而上述信息或者数据往往由被告垄断行为人所持有。

司法实践中面临的取证窘境充分表明,我国反垄断民事诉讼举证难问题更为突出,如何进一步完善相关的诉讼程序和证据制度,切实减轻原告的举证负担,已成为推进我国反垄断民事诉讼的必由之路。<sup>②8</sup>

此外,主动的证据开示有助于尽早明确争议焦点,助力反垄断民事诉讼效率的提升。囿于反垄断民事诉讼案件的复杂性和专业性,很多诉讼当事人都难以发现真正的争议焦点,导致案件审理过程繁琐缓慢,而证据开示制度要求当事人在庭审之前就关注争议焦点并准备相关材料,可以提升诉讼效率。

### 三、我国反垄断民事诉讼证据开示制度的构建

鉴于普通民事诉讼证据开示制度功能之不足,应在完善我国《民事诉讼法》及相关司法解释基础上,进一步构建反垄断民事诉讼特殊的证据开示制度,以适应反垄断民事诉讼的特殊需要。具言之,可在立足于现行法关于反垄断民事诉讼证据规定的基础上,有选择性地吸收借鉴域外成熟做法,尝试构建有中国特色的反垄断民事诉讼证据开示制度。即我国应以民事诉讼法证据开示制度为框架,以法院为中心,创设反垄断民事诉讼证据开示制度,也就是职权制的证据开示制度。在构建反垄断民事诉讼证据开示制度时,应围绕证据开示的启动程序、证据开示的适用条件、证据开示的对象范围及违反证据开示的制裁等方面设计。

#### (一) 构造证据开示制度的两个基础问题

结合我国《民事诉讼法》《反垄断法》的相关规定,在创设我国反垄断民事诉讼证据开示制度时,首先需要解决两个基础问题抑或说顶层设计问题:一是在“以当事人自行取证为主,以法院调取证据为辅”的调查取证模式之下,通过立法赋予一方当事人从另一方当事人及第三方处获取证据的能力;二是妥善处理证据开示与宽大制度、经营者承诺制度之间的潜在冲突,以此平衡反垄断公共执行和私人执行之间的关系。

1. 在反垄断民事诉讼中赋予当事人取证权能。从我国《反垄断法》《反垄断法司法解释》来看,并没有对反垄断民事诉讼中的调查取证作出规定,意味着此类诉讼仍旧遵循一般调查取证规则。因此,根据我国《民事诉讼法》第64条及相关司法解释的规定,在反垄断民事诉讼中,除了自行收集证据外,一方当事人要想从另一方当事人或者第三方处获取相关证据的途径有二:一是向法院申请调取证据,二是由法院依职权调取证据。而民事诉讼司法实践所确立的证据开示制度往往又流于形式,因此原告在反垄断民事诉讼中几乎很难从被告垄断行为人或者第三方处获取相关证据,从前文论及的华为和法院在“华为诉IDC滥用市场支配地位案”中面临的取证窘境就可窥得一斑。如此一来,就有必要仿效欧盟证据开示制度,在一般民事诉讼证据规则之外单独设立反垄断民事诉讼证据开示规则,以此赋予一方当事人从另一方当事人或者第三方处收集证据的权能,矫正反垄断民事诉讼中因“证据偏在”问题引发的取证难和胜诉难问题,即由于存在信息不对称的情况,导致受害方往往难以获得被告违反《反垄断法》的证据,因而无法向法院提起诉讼或者即便能够起诉也可能会面临败诉的困局。<sup>②9</sup>为了契合以法院为主导的既有调查取证模式,可在明确开示条件和范围的情况下,采用“申请

<sup>②7</sup> 参见叶卫平《反垄断法的举证责任分配》,载《法学》2016年第11期。

<sup>②8</sup> 参见王闯《中国反垄断民事诉讼概况及展望》,载《竞争政策研究》2016年第2期。

<sup>②9</sup> 参见林燕萍、俞胜杰《〈关于违反欧盟及其成员国竞争法的损害赔偿诉讼若干规则的指令〉之评析与借鉴》,载《政治与法律》2016年第11期。

+批准”模式,即当事人有权从另一方当事人或者第三方处收集证据,但需要向法院提出书面申请。

2. 禁止开示宽大、承诺案件中的部分证据。如前所述,我国《反垄断法》第46条第2款规定了宽大制度,即参与垄断协议的经营者主动报告达成垄断协议有关情况并提供重要证据的,可以申请依法减轻或者免除处罚。在以往反垄断执法实践中,宽大制度取得了很好的适用效果,在我国奶粉、汽车零配件等垄断协议案件中亦有体现。有学者统计了我国《反垄断法》颁布以来至2016年12月31日国家发改委查处的197件反垄断案件,其中适用宽大制度的案件共计27件,适用比例达到13.7%。<sup>③</sup>在宽大制度得以规定且被适用的情况下,有必要考虑宽大案件中的证据是否应当适用证据开示规则。因为,宽大制度的目的在于通过免除或者减轻处罚激励垄断行为人自首,若是相关信息或者重要证据被开示,则很可能导致宽大申请人面对大量的损害赔偿之诉,申请人极有可能成为后继诉讼中的主要或是唯一目标,因为他们难以反驳自己提供给执法机关的相关证据。<sup>④</sup>为了调和证据开示制度和宽大制度之间的紧张关系,欧盟《损害赔偿规则》第6条规定严禁开示宽大处理声明,具体包括:(1)经营者或者自然人向竞争执法机构自愿提交的书面或者口头陈述;(2)描述参与卡特尔的经营者或者自然人从事卡特尔的情况及在其中所发挥的作用的陈述记录。需要注意的是,上述陈述必须是专门为向竞争执法机构申请宽大特别准备的,其目的在于依据宽大处理规定获得豁免或者减少罚款,并不包括预先已经存在的资料。<sup>⑤</sup>在笔者看来,考虑到宽大制度在查处卡特尔案件中具

有不可取代的作用,为了防止证据开示影响其实施效果,确有必要拒绝对宽大案件中的相关信息和重要证据进行开示。对此,可以规定经营者在宽大案件中主动报告的相关信息和重要证据不适用证据开示规定。根据2019年6月26日国家市场监督管理总局颁布的《禁止垄断协议暂行规定》第33条第2款的规定“重要证据是指能够对反垄断执法机构启动调查或者对认定垄断协议起到关键性作用的证据,包括参与垄断协议的经营者、涉及的商品范围、达成协议的内容和方式、协议的具体实施等情况。”

经营者承诺制度是反垄断执法中的一项制度,根据我国《反垄断法》第45条的规定,它是指在反垄断执法调查中,如果被调查的经营者承诺在反垄断执法机关认可的期限内采取具体措施消除涉嫌垄断行为的消极后果,反垄断执法机关可作出中止调查的决定;在经营者履行承诺后,反垄断执法机构可作出终止调查决定,从而结束执法程序的垄断行为处理方式。<sup>⑥</sup>经营者承诺制度在我国反垄断执法实践中得到了运用。例如,有研究统计了2017年度工商及发改委查处的181件反垄断案件,发现其中有8例案件适用了经营者承诺制度。<sup>⑦</sup>与宽大制度的适用相类似,经营者承诺制度的适用也要求涉嫌垄断行为人提交相关信息和重要证据,如此便会出现证据开示可能会妨碍经营者承诺制度实施的问题。根据《禁止垄断协议暂行规定》第21条第2款的规定“中止调查申请应当以书面形式提出,并由经营者负责人签字并盖章。申请书应当载明下列事项:(一)涉嫌垄断协议的事实;(二)承诺采取消除行为后果的具体措施;(三)履行承诺的时限;(四)需要承诺

<sup>③</sup> 参见林文、甘蜜《我国反垄断宽大制度及其完善》,载《经济法论丛》2017年第2期。

<sup>④</sup> 参见刺森《我国反垄断宽大制度中的重要信息保护问题研究》,载《法学论坛》2019年第2期。

<sup>⑤</sup> See on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, available at [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0104#ntr1-L\\_2014349EN.01000101-E0001](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0104#ntr1-L_2014349EN.01000101-E0001), last visited on 15 August 2019.

<sup>⑥</sup> 焦海涛《我国经营者承诺制度的适用与完善》,载《当代法学》2012年第2期。

<sup>⑦</sup> 参见林文、甘蜜《中国反垄断行政执法数据分析报告》,载王先林主编《竞争法律与政策评论》(第四卷),法律出版社2018年版,第255页。



的其他内容。”对此,笔者认为比照处理宽大案件中证据开示的做法,可以规定对于经营者在申请书中载明的事项,不适用证据开示规定。事实上,欧盟《损害赔偿规则》第6条也将此作为严禁开示的证据。除了避免因证据开示挫伤经营者申请中止调查的积极性外,拒绝开示该等证据的原因还包括上述事实或者证据并未得到核实,其法律效力和证明力存疑。

## (二) 我国反垄断民事诉讼证据开示的制度设计

明确构造证据开示制度的两个基础问题后,如何设计我国反垄断民事诉讼证据开示制度的主要内容和操作规范,无疑就是紧接着需要解决的问题。除了确立如何将反垄断民事诉讼证据开示入法外,还需要围绕证据开示的启动程序、证据开示的适用条件、证据开示的对象范围及对违反证据开示的制裁四个方面设计该制度。

1. 将反垄断民事诉讼证据开示纳入法律规范。如前所述,有必要赋予反垄断民事诉讼中的当事人取证权能,为了做到有法可依,促进证据开示制度在反垄断民事诉讼中的推广和具体实施,还有必要从法律规范层面确立反垄断民事诉讼证据开示制度。那么,应当采取哪一种法律规范路径对此予以规定?在笔者看来,大致有两种选择:其一,在我国《民事诉讼法》中规定反垄断民事诉讼证据开示制度。例如,可以在我国《民事诉讼法》第六章关于证据的规定中增设如下条文:“在反垄断民事诉讼中,除了按照一般规定向人民法院申请调取证据外,当事人认为有必要且符合相关条件的,可以向人民法院申请调取相关证据,以此查明案件事实,明确双方争议焦点。”其二,通过出台《反垄断法》司法解释,以现行法中“当事人及其诉讼代理人因客观原因不能自行收集证据”为依据,对此进行扩大解释,作出如下规定:“在反垄断民事诉讼中,当事人有证据表明需要查明的事实或者证据由另一方当事人或者第三方持有的,可以向人民法院申请调取证据。”

2. 明确反垄断民事诉讼证据开示的制度构成。(1) 证据开示的启动程序。对于如何启动

证据开示程序,结合现行民事诉讼法相关规定,可以将其区分为主动开示和被动开示:第一,主动开示。在人民法院组织证据交换、召开庭前会议期间,当事人和法院没有提出证据开示要求的情况下,一方当事人主动将自己掌握的证据材料进行开示。第二,被动开示。在庭审前,当事人认为有必要对另一方当事人或者第三方持有的证据材料进行开示,在符合证据开示条件的情况下,可以向人民法院请求开示上述证据材料。同时,人民法院可以依职权调取上述证据材料。

(2) 证据开示的适用条件。为了防止当事人滥用证据开示程序,以此拖延反垄断民事诉讼进程或者套取他人重要的商业信息,有必要对证据开示的适用加以限制,这可通过对证据开示的适用条件进行规定予以实现。参考欧盟的经验,具体条件包括:第一,原告已提供证据材料,初步证明有理由相信被诉垄断行为人违反了《反垄断法》的规定;第二,当事人应当明确想要获取的证据材料,并证明这些证据材料与待证事实有关;第三,当事人应该表明其已穷尽其它取证方式且均不能取得有关证据材料。在此过程中,法院应当听取被要求开示证据的当事人或者第三方的陈述和申辩。

(3) 证据开示的对象范围。2019年《民事证据规定》将被动开示的客体限定为“书证”,存在适用范围较窄和证明妨碍适用条件过高的问题,因此,在构建证据开示制度时应予拓宽。在符合证据开示适用条件的情况下,与当事人主张或者抗辩相关的证据材料均应当进行开示,包括当事人掌握的书证、物证、视听资料、鉴定报告等。但对涉及国家利益、公共利益、商业秘密和个人隐私等方面的证据材料,不应当进行开示。另外,其他法律法规明文禁止开示的证据也要排除在证据开示范围之外。

(4) 对违反证据开示的制裁。反垄断民事诉讼证据开示制度的实行,有必要设置相应的制裁措施予以保障,具体包括:当事人在规定时间内不能够开示相关证据材料的,免除另一方的证明责任;对于违反证据开示规定的当事人,法院可以裁定驳回起诉或直接作出驳

回诉讼请求的判决;如果当事人或者第三方违反证据开示命令,可以对其处以罚款、拘留等措施。

#### 四、结语

反垄断民事诉讼具有发现违法行为成本低、原告寻求法律救济的决心大及对违法者的威慑力强等功能,它是对反垄断行政执法的重要补充。目前,大力推进反垄断民事诉讼,已成为当今世界各国实施反垄断法的潮流。<sup>⑤</sup>截至2017年底,全国法院共受理反垄断民事一审案件700件,审结630件,这足以说明民事诉讼在我国反垄断法实施中的重要作用。<sup>⑥</sup>但“证据偏在”问题在我国反垄断民事诉讼中广泛存在,

并已成为制约我国反垄断民事诉讼发展的关键因素。从域外实践看,当事人自行协商或者以法院为中心的模式是可供参考的两种路径,有必要以法院为中心创设我国的反垄断民事诉讼证据开示制度。具言之,首先,需要通过立法赋予一方当事人从另一方当事人及第三方处收集证据的权能,以及禁止开示宽大、承诺案件中的部分证据,化解证据开示与宽大制度和经营者承诺制度的潜在冲突。其次,将反垄断民事诉讼证据开示纳入法律规范,从启动程序、适用条件、对象范围及制裁措施等四个方面明确证据开示的制度构成。

## Construction of Evidence Discovery System in Anti-monopoly Civil Litigation: Rationale and Path

Shi Jianzhong Yuan Xiaolei

**Abstract:** The problem of “evidence bias” is widespread in the anti-monopoly civil litigation and more prominent than the general issue of civil litigation. Active and passive discovery is the fundamental system design to correct this defect. The system design of China’s civil procedure law is inadequate, and it can not adapt to the complicated anti-monopoly civil litigation. China’s substantive law and procedural law are both closer to the civil law system, so that the evidence discovery system of the EU is also more instructive. It is an inevitable choice for China’s is that separate design anti-monopoly civil litigation rules of evidence discovery in addition to the general rules of civil litigation. That is, taking the evidence discovery system of the civil procedure law as the framework, the anti-monopoly civil litigation evidence discovery system is created with the court as the center, and the system is designed around the starting procedures of evidence discovery, the application conditions of evidence discovery, the object scope of evidence discovery and the sanctions for violations of evidence discovery.

**Keywords:** anti-monopoly; civil litigation; evidence bias; evidence discovery

(责任编辑:付强)

<sup>⑤</sup> 参见王晓晔《反垄断法》,法律出版社2011年版,第354页。

<sup>⑥</sup> 参见朱理《反垄断民事诉讼十年:回顾与展望》,载《中国知识产权报》2018年8月24日第8版。

# **Exhibit B-15**



# 论强制型书证收集程序的竞合与选择<sup>\*</sup>

曹建军<sup>\*\*</sup>

**内容摘要:**我国证据收集制度存在四类程序竞合,给当事人和法院对程序的选择与协调造成困境。实务中账簿凭证、鉴定材料、公文书证、核实材料等四类书证的职权命令模式更适宜替代为举证释明,法院依申请取证仍有独特的范围与优势,证据保全应限缩要件和效力以避免排斥温和的书证提出命令。依据程序与利益的差异性标准,程序竞合的纾解方案除“优先型”、“吸收型”外,还应完善“界定型”,以明确书证提出命令的非职权性、非一般性、非直接强制性的制度边界。

**关键词:**程序竞合 程序选择 书证提出命令 职权取证 证据保全

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## 一、问题的提出

“当代社会中以利害关系者的参加和程序保障为中心内容的程序正义观念在其固有的重要意义基础上获得了前所未有的重要性”。<sup>①</sup>民事诉讼法为当事人提供了尽可能充分的程序救济机制(如发展多元化纠纷解决程序)与程序选择机会(如推进案件与程序繁简分流),但是多元化的程序选择也增加了同类程序竞合的几率与当事人选择的困境。例如,案外第三人的四项程序保障路径之间缺乏清晰的界定与统筹,反而造成救济体系的结构紊乱与司法资源的无谓浪费。<sup>②</sup>证据的收集与提出也是民事程序保障的重点领域,法院与当事人在获取证据问题上的相互关系就是程序权利的保障与被保障的关系。<sup>③</sup>

2020年5月1日施行的《最高人民法院关于民事诉讼证据的若干规定》(以下简称《民事证据新规》)第20—24条关于法院调查取证、第25—29条关于证据保全、第45—48条关于书证提出命令,在申请条件、实施措施、法律效果、功能目标等方面存在交叉性和重合性:(1)第20、25、45条对申请期限与申请书记载的要求相似;(2)第23条第3款视听资料与电子数据的法院调取措施与证据保全措施相同;(3)第48条与第95条均规定对方当事人无正当理由拒绝提交调查客体时,法院可裁决对申请人更有利的事实认定。那么当事人在直面程序竞合时究竟应该如何作出选择,分别会产生何种程序法律效果?法院在当事人的程序申请与依职权作出的证据裁决之间,又应当作出何种妥适的安排?

既有的民事诉讼规范、理论与实务并没有重视乃至解答书证收集的程序竞合问题,故有必要在优劣对照与比较法分析的基础上提出针对性的选择方案,以期建构一套内部有序、层次分明的强制型书证收集的程序体系,为书证提出命令在司法实践真正落地生根奠定基础。同时,证据收集程序竞合的纾解方案可以为民事程序竞合的全局解决提供参考性思路,进而为制度上认识民事诉讼程序竞合与程序选择这对矛盾体再添新的视角。

<sup>\*</sup> 本文系教育部人文社会科学研究青年基金项目“民法典实施与证明规范配套研究”(项目编号:21YJC820002)的阶段性成果。

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<sup>①</sup> [日]谷口安平:《程序的正义与诉讼》,王亚新、刘荣军译,中国政法大学出版社2002年版,第21页。

<sup>②</sup> 参见张卫平、任重:《案外第三人权益程序保障体系研究》,载《法律科学》2014年第6期。

<sup>③</sup> 参见蔡虹:《论证据制度中的程序保障问题》,载《法商研究》1999年第5期。

## 二、强制型书证收集程序的同类竞合

我国书证提出命令的适用数量一直较少且没有明显增长,与法院依申请取证、法院依职权取证有着基本相当的适用表现。证据保全的适用总量约是前者的6倍多,也涉及诸多查封、复制、提取书证的保全情形。<sup>④</sup>而日本文书提出命令的申请数量远超我国,第一审新受理案件数每年在9—10万件,文书提出命令的申请件数约占其中的2.7%—3%,2020年民事一审案件新受理数量最低时仍约占比1.36%。<sup>⑤</sup>以下试列举具体案例,说明和印证我国书证领域竞合问题的表现形态及其选择困境。

表:书证收集程序的数据统计与中外对比(2015—2020)<sup>⑥</sup>

	2015	2016	2017	2018	2019	2020
书证提出命令	131	84	66	98	77	133
法院依申请取证	127	128	110	119	163	115
法院依职权取证	114	75	99	118	61	109
证据保全	510	437	538	595	556	572
日本文书提出命令	2825	2574	2433	2212	2058	1820

### (一)书证提出命令与法院依职权取证

《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》(以下简称《民诉法解释》)以及《民事证据新规》虽然在文义上没有规定依职权的书证提出命令,但司法实务已有案例在形式上反映出法院依职权命令持有人提出书证。

【例1】卢某诉请矿建公司偿还借款,矿建分公司、何某、邓某、陈某承担连带清偿责任。何某、邓某辩称,向卢某出具借条是为分公司项目融资的表见代理,卢某、何某陈述借款时有王某、魏某在场,何某系矿建分公司职员。二审法院依职权责令矿建公司在庭审结束后一周内提交在场证人的住址和联系方式、矿建分公司财务记录和职工工资发放表,法院因其未提交而认定表见代理成立。<sup>⑦</sup>

【例2】李某入职万国公司,但未签订书面劳动合同。一审法院释明万国公司提交李某的入职申请表、员工花名册、工资表、考勤记录。由于万国公司未能提交,一审法院认定双方存在事实上的劳动关系。万国公司上诉称,法院责令提交证据违反《民诉法解释》第112条,责令3日内提交违反举证期限不少于15日的规定。二审法院认为,用人单位应当提供其掌握的与劳动争议有关的证据。<sup>⑧</sup>

【例3】信达诚公司将大厦部分空间租给肥羊城火锅店,现租赁合同到期,诉请腾退房屋、支付占用费。被告辩称,双方在2015年9月续签了2年合同,合同文本交给原告盖章后没有取回。一审、二审法院均认为,被告提供的原告经理的录音可以证明已将续租合同交给原告,经法院释明,信达诚公司无正当理由不提交合同文本,认定续租合同存在且合同有信达诚公司的签字。<sup>⑨</sup>

④ 参见福建省德化县人民法院(2016)闽0526证保6号民事裁定书、河南省商丘市梁园区人民法院(2019)豫1402民初10395号民事裁定书、贵州省贵阳市云岩区人民法院(2020)黔0103证保1号民事裁定书等。

⑤ 医疗关系诉讼中,证据保全案件2008年281件、占比29.4%,2019年82件、占比10%,2020年43件、占比6.6%。参见“日本最高裁判所官网”,[https://www.courts.go.jp/toukei\\_siryou/siryo/hokoku\\_09\\_hokokusyo/index.html](https://www.courts.go.jp/toukei_siryou/siryo/hokoku_09_hokokusyo/index.html),最后访问日期:2022年5月9日。

⑥ 2021年10月31日笔者在“中国裁判文书网”以“《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》第112条”为关键词,在“理由”上检索共获得民事裁判文书617份,其中,关于第94条792份、第96条630份,而以“《中华人民共和国民事诉讼法》第81条”为关键词共检索到民事裁判文书3862份。

⑦ 参见四川省成都市中级人民法院(2016)川01民终1072号民事判决书。

⑧ 参见河南省郑州市中级人民法院(2017)豫01民终2650号民事判决书。

⑨ 参见北京市第一中级人民法院(2016)京01民终4196号民事判决书。

例 1,法院依职权责令被告提出能够证明在场证人身份的劳动关系书证资料。例 2,原审被告在上诉中对一审法院主动“释明”或“责令”己方提交书证的职权行为提出异议。例 3,法院在没有当事人申请时释明另一方当事人提出租赁合同的文本,试图以证据提出的释明理论印证依职权责令提出书证的正当性。但是,例 2、例 3 的“释明”超出了举证释明的利他性,落入到利己的职权性。因为当事人没有响应法院的释明时,不应当遭受法院的制裁或不利认定,释明只是法院督促当事人充分举证的手段,而非帮助法官形成心证的证据调查,释明不能侵犯当事人对证据提出的选择权和处分权。<sup>⑩</sup>同时,三个案例关于推定真实的法律效果虽符合书证提出命令的制度外观,但却不属于《民诉法解释》第 96 条法院依职权收集证据的五种法定情形,由此陷入进退维谷、两面抵触的困境。<sup>⑪</sup>

## (二) 书证提出命令与法院依申请取证

书证在对方当事人的控制之下无疑属于不能自行取证的客观原因,例如原告申请法院责令被告提交其名下某银行账户 2019 年 11 月的全部银行流水记录,就属于证据由被告控制而原告直接调取存在客观困难,既符合书证提出命令的申请条件,也符合法院向第三人银行调取账户资料的申请条件。<sup>⑫</sup>《民诉法解释》第 94 条第 2 款后句也基本与《民诉法解释》第 112 条的表述一致,《民事证据新规》第 20 条删除了 2001 年旧法第 19 条第 2 款允许申请人对不予准许的通知书申请复议的规定,使得两者之间的同质化更趋明显。

【例 4】远鹏公司诉请鑫泓公司按合作开发合同约定的 30% 分配项目利润。原告提交《调查收集证据申请书》和《司法审计申请书》,法院向被告发出《举证通知书》。被告第一次开庭时没有提交,法院发出民事裁定责令被告提交财务、销售、成本、利润等相关书证。被告复议称项目还未完成而无法确定利润和成本,法院裁定驳回。因远鹏公司依约享有对项目利润的知情权和分配权,庭审中被告陈述已自行委托审计,故法院酌情判令鑫泓公司分配 3000 万元。<sup>⑬</sup>

【例 5】杜某 1 诉请杜某 2 支付工资 15 万元及未签订书面合同的劳动赔偿。原告向法院申请调取保存在被告处的预支工资收条原件、许某记录的小记录本原件、原告记录的考勤表原件,法院比照《民诉法解释》第 94 条与第 112 条,认为原告应当申请法院责令被告提交,故不予准许原告的调取证据申请。<sup>⑭</sup>

【例 6】李某诉称刘某伪造《农村土地承包经营权流转合同》,取得原本属于己方的土地经营权,请求法院确认合同不成立并赔偿损失。原告申请法院责令对方提交合同原件并对签名进行鉴定,法院发出《提交证据通知书》,责令五日内提交却至今未有回复。法院又向当地村委会及财经所调查取证,但均未能取得合同原件及原、被告之间土地流转的档案材料。故法院认定合同不能成立。<sup>⑮</sup>

例 4,当事人按照法院依申请收集证据的程序提出申请和复议,而法院也按照相应的申请程序进行审查与裁定,呈现出书证提出命令与法院依申请收集证据的混同局面。例 5,法院认为书证提出命令优先于当事人申请法院收集证据程序,司法实践已经出现程序保障充分的书证提出命令挤压法院依申请收集证据的现象。例 6,法院不敢贸然适用不利证据推定规则,接续运用依申请收集证据程序以验证证据获取的可能性。同类程序的并存已经引起法院的适用疑虑,被申请人无正当理由拒不遵从书证提出命令的,法院可能会不懈尝试亲临现场收集书证,以超越法定要求而努力查明案件真实。

## (三) 书证提出命令与证据保全

书证持有人或控制人毁灭或篡改书证较为便利,出于两造当事人的利益对立也有动机隐藏或毁灭于己不利的证据材料。2020 年 11 月 9 日通过的《最高人民法院关于知识产权民事诉讼证据的若干规定》(以下

<sup>⑩</sup> 参见[日]高桥宏志:《民事诉讼法:制度与理论的深层分析》,林剑锋译,法律出版社 2003 年版,第 359 页。

<sup>⑪</sup> 书证提出命令属于证据申请的方法之一,法院的证据调查依据辩论主义是以当事人申请为原则,法院准许调查申请之后被命令提出书证的对方在期日内正式提交书证供法院阅读查证。故法院依职权取证与依职权命令提出书证的竞合主要是指依职权启动证据调查的主动性相同。参见[日]秋山幹男等:《コンメンタール民事诉讼法(Ⅳ)》,日本评论社 2010 年版,第 74 页。

<sup>⑫</sup> 参见安徽省阜阳市颍东区人民法院(2020)皖 1203 民初 3781 号民事裁定书。

<sup>⑬</sup> 参见湖南省岳阳市中级人民法院(2015)岳中民一初字第 11 号民事判决书。

<sup>⑭</sup> 参见河北省唐山市中级人民法院(2020)冀 02 民终 4449 号民事判决书。

<sup>⑮</sup> 参见湖北省嘉鱼县人民法院(2019)鄂 1221 民初 1284 号民事判决书。



简称《知产证据规定》)第 11—18 条证据保全规则与第 24—26 条证据提出命令规则并存,两者的客体范围均不限于书证,且第 13 条无正当理由拒不配合或妨害证据保全与第 25 条拒不提交证据或实施妨害使用证据的行为在法律后果上高度相似。

【例 7】泓利公司提交了立信公司商业秘密侵权获利的初步证据,并申请一审法院保全立信公司的财务账册、生产销售记录等书证、电子资料。但立信公司以涉及商业秘密为由拒不提交。二审法院结合侵权的时间、手段、情节、后果,参考原告《专项审计报告》以及被告获利情况统计表等,酌定赔偿 150 万元。<sup>⑮</sup>

【例 8】杨某诉请嘉恒公司、王某解除合作开发合同,支付投资、收益。一审法院根据杨某的申请,裁定查封被告近三年的会计账簿、记账凭证、财务报表以及相关合同。被申请人在多次限定期限内故意拖延近 3 个月,提交的材料中存在诸多瑕疵且没有合理解释,导致无法进行审计清算,最终法院认定杨某主张的合作项目投资 860 万元及收益 1140 万元。<sup>⑯</sup>

【例 9】李某诉请电建公司支付其签订海外项目的奖金 800 万元,二审中申请法院保全被告海外项目的银行流水、关联公司的银行流水和税务资料,因李某未能证明证据可能灭失或以后难以取得,法院未予准许。李某申请法院向某集团公司核发调查令查明海外项目的中标价格、目标贷款利率,法院以调查令只签发给代理律师为由驳回申请。李某又申请法院责令某集团公司出具相关协议,法院以被申请人并非本案当事人、申请人未举证证明取证必要性为由驳回申请。<sup>⑰</sup>

如例 7、例 8 所示,法院可能因紧迫性先进行证据保全,再以《民诉法解释》第 112 条作为违反书证保全裁定的法律后果,或者在现场保全不成时责令限期提交保全裁定列举的书证。在前者,当事人违反书证提出命令与违反证据保全裁定具有相同的法律效果,许多法院会适用《民诉法解释》第 112 条替代《民事证据新规》第 95 条证明妨害规则。在后者,直接取证型证据保全可能转化为间接提交型书证提出命令,两类规则相互交杂、难解难分。这也引起了例 9 所示当事人依次申请证据保全、调查令、书证提出命令的现象,制度适用者也不能合理区分高度相似的证据收集程序。

### 三、书证提出命令与职权证据收集间的选择与协调

书证提出命令是当事人证据申请与法院证据决定的有机组合,法院依申请取证省略了被申请人的防御程序,法院依职权取证免除了申请人对收集必要性的举证负担。既然书证提出命令是法院依申请取证的特别规定,也是法院依职权取证的前置阶段,那么是否有必要增设依职权的书证提出命令,是否应叠加适用书证提出命令与法院依申请取证以增强取证的力度和程序说理的依据呢?前者须解决职权命令的正当性与合理性问题,后者须解决程序的适用关系及其顺序问题。

#### (一)书证提出命令与法院依职权取证之间的选择

《民诉法解释》第 96 条规定法院依职权收集审理案件需要的证据,主要指向可能损害国家利益、社会公共利益、他人合法权益的实体性事项以及法院控制和推进的程序性事项。由于法定事由的界定标准没有考虑证据不均衡分布的影响,因此不可能借由该条的法律解释,赋予法院依职权命令提出书证的权力。然而,我国司法实务自发形成的依职权的书证提出命令主要包括:(1)责令用人单位提交职工考勤记录、工资支付记录、财务凭证及账册,证明原告主张的薪资欠付、经济补偿及其数额的事实是否真实;<sup>⑱</sup>(2)责令一方提交检材以供鉴定或审计,因其无正当理由拒不提供而认定申请人主张的事实为真实;<sup>⑲</sup>(3)以维护国家利益、公共利益或他人权益为由责令公法人提交其制作或保管的书证,以查明案件基本事实或核对一方举证的辅助

<sup>⑮</sup> 参见最高人民法院(2016)最高法民申 2460 号民事裁定书。

<sup>⑯</sup> 参见山东省高级人民法院(2016)鲁民终 15 号民事判决书。

<sup>⑰</sup> 参见上海市第一中级人民法院(2020)沪 01 民终 6390 号民事判决书。关于民事调查令与书证提出命令的关系,参见曹建军:《论民事调查令的实践基础与规范理性》,载《法学家》2019 年第 3 期。

<sup>⑱</sup> 参见江苏省海安市人民法院(2021)苏 0621 民初 3491 号民事判决书、陕西省咸阳市中级人民法院(2020)陕 04 民终 709 号民事判决书、北京市顺义区人民法院(2020)京 0113 民初 6867 号民事判决书等。

<sup>⑲</sup> 参见辽宁省凌源市人民法院(2019)辽 1382 民初 3250 号民事判决书、广东省广州市越秀区人民法院(2019)粤 0104 民初 34647 号民事判决书等。

事实;<sup>①</sup>(4)责令制作和保存书证的一方当事人提交原件,核对举证方提交的复印件的真实性。<sup>②</sup>

账簿凭证的职权性提出命令已由劳动关系纠纷扩展至征地补偿、雇佣关系、合伙关系、建设工程施工合同等其他纠纷,<sup>③</sup>但我国只有知识产权诉讼领域存在依职权命令提出商业账簿的特殊规定。<sup>④</sup>2020 年修正的《专利法》第 71 条第 4 款、2020 年修正的《著作权法》第 54 条第 4 款、2019 年修正的《商标法》第 63 条第 2 款均规定,法院为确定赔偿数额且权利人已经尽力举证时,可以责令侵权人提供与侵权行为相关的账簿、资料等。依据《会计法》第 3 条和《刑法》第 162 条之一,任何单位均应设置会计账簿并保证真实性、完整性,不得隐匿或故意销毁。涉案当事人一般是拥有完善财务会计制度的单位,财务账簿、会计凭证等经常用以证明当事人主张的侵权赔偿数额。同时《知产证据规定》第 26 条新设秘密保持命令制度,保护诉讼中的商业秘密以解除当事人举证时的忧虑。

可见,知识产权诉讼的职权命令已经初步具备现实基础:(1)刑事或行政法规确定持有人负有书证保管义务,定期检查的管理制度也可以保障书证的真实性和完整性;(2)特定书证与纠纷事实已经形成经常性的证明关系,这增加了命令提出书证的必要性与可行性;(3)客观原因造成证据的不均衡分布,使得职权责令不会破坏既有的举证制度;(4)秘密保护制度可以均衡持有人的秘密利益与举证人的证明权益,防范书证记载内容的泄露和传播;(5)当事人穷尽必要的举证责任,仍不能证明案件的基本事实,使得当事人的合法权益可能蒙受证明手段的局限。不过,《知产证据规定》第 24 条依旧强调“当事人书面申请”,明确区别于第 2 条法院“根据当事人的主张及待证事实、当事人的证据持有情况、举证能力等,要求当事人提供有关证据”。因为法定赔偿规则可以消解无法查证侵权人获利的风险,有效替代法院的事实探知重担。因此,知识产权诉讼领域的个别特例既不具有制度稳定性,也不能推论民事诉讼的基本领域也要实行依职权的书证提出命令。

鉴定材料的职权性提出命令缺乏相应的法律依据,鉴定人有权取得和了解鉴定材料,但被申请人是否负有强制提交检材的诉讼义务以及证明妨害的法定责任并不明确。《民事证据新规》第 30 条规定了鉴定申请的举证释明与职权委托,但法院依职权委托鉴定仍要受《民诉法解释》第 96 条第 1 款的法定限制。第 31 条规定,对需要鉴定的待证事实负有举证责任的当事人拒不提供相关材料时,承担举证不能的法律后果,并非持有书证的反证方承担推定真实的法律后果。公文书的职权性提出命令已经以第三人为调查对象,超越现行法有关对方当事人的主体限定。<sup>⑤</sup>但是,公文书的提交属于法院依申请收集的范围,不宜转移到职权色彩更强、程序保障更弱的主动型职权收集程序。

核实材料的职权性提出命令符合我国实务中广泛存在的为核实证据真实性或面向辅助事实的职权收集行为。<sup>⑥</sup>有的法院认为,依职权提取相关书证作为佐证的,可以补强证据价值和事实认定,属于法院审查核实证据的法定职权。若依职权调取的证据不属于本案唯一或主要的裁判依据,或不影响本案实体处理结果的,超出取证范围的程序瑕疵不属于严重违法法定程序的重审或再审理由。<sup>⑦</sup>那么,法院为补足其对证据真实性的自由心证,如审核复印件、单方制作的书证、书证上的签名或印章的,可否依职权收集相关佐证材料呢?

<sup>①</sup> 参见福建省宁德市中级人民法院(2019)闽 09 民终 1652 号民事判决书、广东省佛山市中级人民法院(2020)粤 06 民终 2668 号民事判决书、湖北省黄冈市中级人民法院(2016)鄂 11 民终 441 号民事判决书等。

<sup>②</sup> 参见成都铁路运输中级法院(2020)川 71 民终 35 号民事判决书、山西省晋中市中级人民法院(2020)晋 07 民终 786 号民事判决书、江西省峡江县人民法院(2019)赣 0823 民初 985 号民事判决书等。

<sup>③</sup> 参见陕西省咸阳市渭城区人民法院(2019)陕 0404 民初 1340 号民事判决书、山东省莘县人民法院(2020)鲁 1522 民初 3663 号民事判决书、重庆市涪陵区人民法院(2020)渝 0102 民初 4891 号民事判决书等。

<sup>④</sup> 日本依职权的文书提出命令也只存在于特别法,如商法第 19 条的商业账簿、公司法第 434 条的会计账簿和第 443 条的计算文件、专利法第 105 条的证明侵权行为和计算损害的必要文件。同前注①,[日]秋山幹男等书,第 371 页。

<sup>⑤</sup> 我国台湾地区“民事诉讼法”第 350 条规定依职权命令提出公文书,但《德国民事诉讼法》第 273 条、《日本民事诉讼法》第 228 条负有提出义务的公文书实际上仍属于引用型文书。

<sup>⑥</sup> 参见海南省高级人民法院(2018)琼民终 28 号民事判决书、河北省邯郸市中级人民法院(2020)冀 04 民终 3649 号民事判决书、广西壮族自治区南宁市中级人民法院(2017)桂 01 民终 2010 号民事判决书等。

<sup>⑦</sup> 参见西藏自治区拉萨市中级人民法院(2015)拉民一终字第 196 号民事判决书、四川省高级人民法院(2019)川民申 1679 号民事裁定书。

大陆法系文书提出命令的职权介入模式主要包括职权命令、释明处分、先释明再命令三类。《德国民事诉讼法》2001 年新增第 142 条法院依职权命令文书提出的一般性规定,以强化第一审程序的审理功能,帮助法院尽可能在早期阶段总体把握作为诉讼基础的案件事实。为调和第 142 条无条件的提出义务与第 422、423 条要件限定的提出义务,通说认为法院不能命令提出当事人没有主张的新事实,不能剥夺当事人对诉讼资料的控制权限。<sup>②③</sup>《日本民事诉讼法》第 151 条第 1 款第 3 项规定,法院为明确诉讼关系,可以通过释明处分的方式促使当事人提出其持有的诉讼文书或诉讼中已引用的文书以及其他物件。因为法院只有阅读文书才能理解当事人的主张。例如,法院向当事人释明长期交易的内容和进款情况不明确时,可以命令当事人提出其曾经援引的合同书或账簿等。<sup>②④</sup>我国台湾地区“民事诉讼法”第 288 条第 1 款规定职权证据调查,第 203 条第 2 款、第 269 条均是指法院通过释明处分的形式命令文书提出,若经法院依据第 199 条释明当事人声明证据,当事人仍有主观上怠钝或受外力牵制等情形,或者法院欠缺判断能力而须鉴定时,才有法院职权介入的必要。<sup>③⑤</sup>

两相对照,核实材料的职权提出命令与日本法上释明提出引用型文书具有一定的相似性,若一方提出关涉主要事实的书证复印件,法院有权命令对方提出其持有的原件,以查明证据及相应事实的真实性。核实材料的职权提出命令也与德国法上依职权的文书提出命令具有一致性目标,均为促进早期的争点整理。但我国司法实务上出现的形式上的依职权责令提出书证更适宜在实质上纳入《民事证据新规》第 2 条第 1 款的举证释明制度。举证释明与职权证据收集具有时间上的前后相继、作用上的替代与补充关系,举证释明一定程度上消解了职权收集证据的需求。法院释明权的行使范围应当限制在当事人陈述中最低限度的暗示,即能从当事人的已有陈述中得到线索的事项。<sup>④⑥</sup>如果依申请的证据调查结果对该方当事人不利,再释明提出其他证据申请的,或一方当事人申请的证据已能证明待证事实,再释明对方当事人提出反证的,均属于超越释明权的合理范围,从辩论主义的补充地位迈入了职权干涉的越矩境地。<sup>④⑦</sup>

## (二)书证提出命令与法院依申请取证之间的协调

我国《民诉法解释》和《民事证据新规》已经为书证提出命令配置了较为全面周延的程序规范,而法院依申请收集证据却仍然面临程序保障匮乏的批判。首先,如何具体明确法院决定取证与否的判断标准、双方能否对席辩论或有发表意见的渠道、法院调查收集证据的手段和范围有无约束等问题,仍有待配置细致的规定与可操作性的规则。其次,法院对调查收集证据的申请享有巨大的自由裁量权,既缺乏程序的稳定性和可期待性,又缺乏程序的规范性和有序性,产生权责分离的矛盾。法院在实际调查取证过程中可能偏袒一方,而刻意选择对一方有利或故意忽视对另一方不利的证据。如果法院拒绝当事人的取证申请,司法实践中经常出现不说明理由或简单说明理由的现象。这反映出法院对当事人的申请调查取证权缺乏程序上的重视,损害了当事人的程序权利与程序主体地位。<sup>④⑧</sup>最后,法院依申请取证程序在司法实践的运行中已经表现出当事人申请程序不规范、法院的审查标准不统一、法院的调查取证程序不正式、法院存在不愿调查取证的现实倾向、二审或再审难以审查原审调查取证的决定标准等严重问题。<sup>④⑨</sup>

<sup>②③</sup> 第 142 条在司法实务的使用其实十分有限,尚不足以动摇辩论主义在民事诉讼以及证据调查中的基础性地位。参见[日]德田和幸等:《民事程序法制的展开与程序原则》,弘文堂 2016 年版,第 431 页。

<sup>②④</sup> 参见[德]Gerhard Wagner:《诉讼当事者による文书提出——情报提供义务と拒绝权》,[日]河野宪一郎译,载《商学讨论》2011 年第 4 期。日本 1948 年就删除了法院职权调查条款,司法实务里法院基本也不会利用释明处分的文书提出命令。参见[日]秋山幹男等:《コンメンタル民事诉讼法(Ⅲ)》,日本评论社 2008 年版,第 300—301 页。

<sup>③⑤</sup> 参见姜世明:《民事诉讼法注释书(四)》,新学林出版股份有限公司 2013 年版,第 294 页。

<sup>④⑥</sup> 参见任重:《我国民事诉讼释明边界问题研究》,载《中国法学》2018 年第 6 期。由于《民事证据新规》第 2 条第 1 款更接近于法律观点上的释明而非提出具体证据申请的释明,故我国举证释明制度应当在方式、内容、范围等方面进行对应性的完善。

<sup>④⑦</sup> 参见杨建华:《民事诉讼法论文选辑》(上册),五南图书出版公司 1984 年版,第 326 页。

<sup>④⑧</sup> 参见李浩:《论民事诉讼当事人的申请调查取证权》,载《法学家》2010 年第 3 期。

<sup>④⑨</sup> 参见毋爱斌:《当事人申请调查取证制度运行的异化与回归——基于 S 法院民商事司法实践的实证分析》,载《西南政法大学学报》2014 年第 4 期。



由于书证提出命令是对当事人申请法院收集证据的具体落实和完善,当事人申请法院收集对方控制的书面证时可以优先适用程序保障更加充足的书面证提出命令。但另一方面,法院依申请取证自有独特的适用领域与明显的程序优势,不能完全为书面证提出命令所替代:(1)客体范围更宽,其实质是当事人负有一般化义务的证据提出命令,法院既可以收集言辞证据,如询问证人并制作庭外调查笔录,也可以向第三人调取其持有的所有类型书面证,书面证以外的其他证据(包括物证、鉴定检材等)也属于调取范围之列;(2)法院可以现场调查核实被申请人的书面证持有状况,邀请当事人、诉讼代理人、专家辅助人或鉴定人到场协助,有利于提高取证的准确性和调查的实效性;(3)法院亲自调取国家机关或管理部门存档的公文书证,既符合我国档案管理的既有规定,也契合对公协助行为的现实逻辑,有利于获得案外第三人的协助并增加取证成功率;(4)法院违法收集主要证据或违法驳回证据申请的,当事人可以依据《民事诉讼法解释》第 323 条、《民事诉讼法》第 207 条,提起上诉或申请再审以纠正法院违反法定证据收集程序的行为,弥补了当事人对书面证提出命令无法提出复议、上诉、再审的规范上缺憾。

#### 四、书面证提出命令与证据保全间的选择与协调

在日本,法院一般倾向于对其证据调查的必要性进行严格审查,经常以不具有必要性为由驳回当事人对文书提出的申请。但实务上文书提出命令已经具有证据收集的现实功能,故实务界主张应当根据证据不均衡分布的程度、审理的进展状况等放宽对其调查必要性的审查,以发挥其促进早期争点整理与证据收集的正面机能。<sup>⑤</sup>我国书面证提出命令亦是如此,加之证据保全向证据收集的功能扩张,使得两者存在适用上的交叉与竞合。由于证据保全具有直接性、强制性和职权性的特征,可能会以其取证功效和启动便利排挤相对劣势的书面证提出命令。故两者竞合的选择方案须根据各自的程序优势做出妥当的安排,合理限定证据保全的边界以实现两者的协调与互补。

##### (一)程序的对照与择一

证据保全程序收集证据的实际功效更加显著,可以在诉前和诉中及时且直接地强制获取当事人和第三人控制的书面证:第一,书面证的保全方法与财产保全、执行措施高度相似,我国的证据保全程序实际上已经是对证据的直接强制执行。实务中法院最常使用的保全方法就是扣押书面证,可以最便捷、最有效地达到保全效果,尤其是在知识产权案件中直接扣押与侵权行为和赔偿数额的认定有关的书面证,可以避免侵权人销毁或隐匿书面证。<sup>⑥</sup>第二,证据保全的客体 and 对象范围均没有特殊限制。法院的证据保全裁定既可以针对超越提出义务范围的书面证,也可以针对书面证、视听资料、电子数据以外的其他证据种类。《知产证据规定》第 15 条第 2 款规定,证据为案外人持有的,人民法院可以对其持有的证据采取保全措施。第三,证据保全具有相对完备的救济程序,可以参照适用《民事诉讼法》第 111 条复议救济条款,自收到裁定书之日起五日内可向本院申请复议,复议期间不停止裁定的执行。且《知产证据规定》第 17 条规定,被申请人对证据保全的范围、措施、必要性等提出异议并提供相关证据,人民法院经审查认为异议理由成立的,可以变更、终止、解除证据保全。

书面证提出命令的优势则主要体现在举措温和、成本低廉、保障周延。其一,被申请人应当遵照裁定向法院递交或邮寄书面证材料,虽不排除距离遥远或管理需要时由法院在文件保管地进行证据调查,但因为不利证据推定的间接强制,法院没有必要依裁定对被申请人采取直接强制措施。而法院进行证据保全时可能要强行进入被申请人的生活住所或营业场所,常常遭遇抗拒或阻挠,激化双方当事人之间以及被申请人与法院之间的对立和矛盾,在当前的司法环境下可能引发不利社会影响。其二,申请人无须为书面证提出命令缴纳申请费和提供担保,只需负担因提交书面证可能产生的费用。书面证提出义务是由被申请人履行,法院原则上也不必外出进行取证调查,故不必补偿法院的劳费。而证据保全的成本相对较高,尤其是异地保全,既加重法院和申请人的负担,又影响诉讼程序的顺畅进行。其三,书面证提出命令的审查程序包括听证、举证和辩论,是在双方当事人主张和举证的基础上作出命令与否的裁定,可谓相对审慎全面的事前审查程序。而我国一般民事

<sup>⑤</sup> 参见日本律师联合会研讨会报告书:《民事裁判における情報・证据收集方法の确立に向けて》(2018 年 9 月 4 日),第 5、8 页, <https://www.nichibenren.or.jp/activity/justice/minjisihoukaikaku.html>, 最后访问日期:2022 年 5 月 9 日。

<sup>⑥</sup> 参见许少波:《民事证据保全制度研究——以法院为中心的分析》,法律出版社 2013 年版,第 145 页。



诉讼(除知识产权诉讼)的证据保全只须接收申请人一方的意见及其举证,是以独立型事后复议救济取代事前审查程序。故书证提出命令具有救济的及时性特点,而证据保全则具有执行的快速性特点。

至于证据保全是否具有比书证提出命令更早进入证据调查的程序优势,则需要结合我国的法律规定与制度语境。依据大陆法系的条文与法理,证据保全是预先进行的证据调查,因保全的紧迫性与证据的危险性,法院在正式的证据调查程序之前通知当事人到场并阅览文书、获知内容。诉讼中经当事人陈述或宣读证据保全笔录,受诉法院无需再对该证据调查笔录或被保全的书证进行证据调查。<sup>⑤</sup>而文书的证据调查程序是以书证的申请或提出为起始,书证在提出之后立刻进入正式的证据调查程序,在证据调查的时间阶段上稍晚于证据保全的调查程序。<sup>⑥</sup>但依据《知产证据规定》第14、16条,法院无论是采取控制型保全措施还是固定内容型保全措施,均只是为全面反映证据的真实状态,而非要在保全程序中直接查验核定其证明力。同样的,依据《民事证据新规》第47条第2款,命令提交的书证也要交给当事人质证,进入法庭调查和法庭辩论程序。换言之,书证保全是以勘验方法固定文书的原本和形式证明力,还是以书证方法直接调查文书的内容及实质证明力,应当视证据保全的类型及其功能而定。<sup>⑦</sup>若是纷争解决型证据保全,应当以书证调查方法查明文书的内容,如此才能事前及时确定纠纷事实;若是传统型证据保全,应当以勘验方法取得和固定文书的真实内容,书证内容的实质证明力应当留待正式的法庭调查程序查明。

综上,两者实际上形成了不同层次的取证功能,可以满足不同需求的取证利益。资力雄厚、取证迫切的当事人可能更倾向于证据保全,而面临案多人少压力的法院可能更青睐程序保障充足的书证提出命令。2019年以后陆续修正的《专利法》第71条第2款、《著作权法》第54条第2款、《商标法》第63条第3款大幅提高了法定赔偿限额,改变了知识产权诉讼当事人为获得较高的赔偿数额而申请证据保全以查证对方侵权获利的偏好现象。<sup>⑧</sup>

## (二)程序的协调与兼顾

为协调证据保全与书证提出命令的适用关系,大陆法系民事诉讼法一般规定了差异化的程序要件与效果。《德国民事诉讼法》第485条将原先的证据保全程序改造为独立证据程序,按照适用阶段的不同可以划分为传统型证据保全与诉前纷争解决型证据保全。第485条第1款的传统型证据保全以紧急性和证据危险性为保全的必要性要件,保全措施只能适用于勘验、证人、鉴定三种证据方法,并不包括当事人询问和书证。之所以排除书证的适用,是因为德国的立法、学说、实务对文书提出义务在实体法和程序法的要件设有相当周密的规定,没有必要再对书证进行证据保全。<sup>⑨</sup>第485条第2款诉前纷争解决型证据保全限于诉前阶段,旨在促进当事人达成和解、避免诉讼纷争,因此扩张当事人诉前收集证据信息的权利和手段,不再以调查和固定证据方法为目的。日本的证据保全决定本身并没有强制提出书证或物证的效力,被申请人违反证据保全决定时并没有法定的不利制裁,如果被申请人懈怠或拒绝提出保全对象,当事人必须向法院申请发出文书提出命令或检证物提出命令。<sup>⑩</sup>因此,日本法允许在证据保全程序中发出文书提出命令,两者是互补与兼容的关系。同时,对于第220条第4款规定的五种文书提出义务的例外,可以通过证据保全程序收集这五种没有提出义务的文书,但是证据保全决定也会慎重考虑相对方的权利保护,因而也经常存在不能期待被申请人配合保全程序的情形。<sup>⑪</sup>

然而,我国台湾地区“民事诉讼法”第368条传统型证据保全允许采用书证调查方法,诉前纷争解决型证

<sup>⑤</sup> 参见占善刚:《证据保全程序参照适用保全程序质疑——〈中华人民共和国民事诉讼法〉第81条第3款检讨》,载《法商研究》2015年第6期。

<sup>⑥</sup> 参见[德]罗森贝克、施瓦布、戈特瓦尔德:《德国民事诉讼法(下)》,李大雪译,中国法制出版社2007年版,第859—868、888—892页。

<sup>⑦</sup> 参见[日]栗田隆:《文书提出命令の机能の扩张——文书作成命令等を含む提出命令と诉讼系属前の提出命令》,载《关西大学法学论集》2013年第5期。

<sup>⑧</sup> 参见徐春建、刘思彬、张学军:《知识产权损害赔偿的证据规则》,载《人民司法》2012年第17期。

<sup>⑨</sup> 参见孔令章:《论法院诉前证据保全制度——借鉴德国独立证据调查程序的思考》,载《现代法学》2011年第3期。

<sup>⑩</sup> 参见[日]伊藤真:《民事诉讼法(第四版补订版)》,曹云吉译,北京大学出版社2019年版,第309—311页。

<sup>⑪</sup> 参见[日]东京地裁证据保全研究会编著:《证据保全の实务》,金融财政事情研究会2006年版,第112、122页。

据保全也覆盖书证,在程序适用的范围上比德国仅限于书面鉴定要更加宽泛。学者刘玉中认为,新法注重发挥诉前证据保全的证据收集功能,建议对不协助证据保全的主体科处罚鍰,在必要时采取直接强制的方式。<sup>④</sup>学者许士宦主张,可以依法律解释出一般化的文书提出义务,且允许对第三人强制执行文书提出命令,证据保全程序已经不再是本案诉讼程序的附随程序,而是与后者具有阶段性和连续性的关系。<sup>⑤</sup>若相对人对证据保全的不当妨碍已非强制处分能够排除时,我国台湾地区“民事诉讼法”第 282 条之一关于证明妨害、第 345 条关于文书提出命令等的制裁仍可适用。且第 10 条第 1 项规定,文书持有人无正当理由不遵从法院的文书提出命令时,法院可以裁定课处新台币 3 万元以下罚鍰,必要时得以裁定命令强制处分。故文书提出命令与证据保全程序杂糅,皆可用于强制对方当事人或第三人提出文书,且可直接强制执行。证据保全的强制执行没有效果时仍可适用证明妨害、文书提出命令的推定真实或者处以罚鍰。长此以往,强化后的证据保全将替代文书提出命令,使得“智慧财产案件审理法”中的文书提出命令条款虚置。<sup>⑥</sup>

因此,我国的证据保全与书证提出命令能否兼容的关键在于,保全要件是否限于紧急性事由。若再放宽保全要件上的紧急性要求,那么当事人完全可以绕道证据保全程序收集书证,不仅能摆脱《民事证据新规》第 47 条书证提出义务的限制性范围,而且将突破书证提出命令不能据以强制执行的谦抑性。故我国应当限制传统型证据保全的要件解释与效力范围,依据当事人的申请与初步证据材料谨慎审查和认定证据的重要性、收集的必要性、保全的紧迫性、灭失的危险性等要件是否齐备,尤其是当保全失去紧迫性和危险性时,应当将现场保全的直接强制措施及时转化为责令提交书证的间接强制措施。

## 五、书证收集程序选择的基本思路

随着我国程序法治的发展与程序规则的健全,愈加充分的多元程序供给为当事人的程序保障奠定了前提和基础,当事人也获得在不同纠纷解决方式或不同程序事项之间自主选择的机会和权利。但无条件的程序竞合和无秩序的程序选择也会造成程序不安、实务混乱、制度变异、资源耗费等严重问题,故对当事人的程序选择权应当附加一定的限制。一是立法者对程序选择的许可范围与禁止范围进行限定,如协议仲裁的范围、协议管辖的范围、非公开审理方式的选择、简易与普通程序的转化等;二是立法者对程序选择的先后顺位进行限定,如劳动仲裁前置、先行调解等。我国应当以程序的差异性和利益的差异性为标准重新审视民事程序的供给与分类。因为程序选择权的存在有三项前提:一是“程序之间的差异使选择成为必要”;二是“不同程序对当事人的利益带来不同影响”;三是“法院在必要时能够根据诉讼当事人的特殊需要来塑造程序”。<sup>⑦</sup>只有不同“程序群”之间以及“程序群”内部均实现差异化、层次化、有序化、体系化的界定与布局,当事人程序选择权的配置与行使才能是合理和正当的。

### (一) 书证收集程序竞合的根源分析

书证提出命令与法院依申请收集证据、依职权收集证据、证据保全的程序竞合起源于四者之间的结构同质化与功能同质化。一方面,证据收集程序的基本结构是由程序要件、程序流程与程序效果组成,申请人依据法律规定的要件提出取证申请,法院依据法律规定的效果进行证据裁判。《民诉法解释》第 94—97 条、《民事证据新规》第 20、62 条粗放化、概括性的规定使其无法区分于其他两类证据收集程序。《知产证据规定》第 11 条有关证据保全申请的审查程序,只是考量“证据是否可以由申请人自行收集”,并没有排除书证提出命令与法院收集证据程序,即根本没有考虑过围绕法院职权的强制型证据收集程序的关系及其协调这一命题。四者在程序要件(包含主观、客观、时间等)、程序流程(包含申请、审查、裁定、救济等)、程序效果(包含对证

<sup>④</sup> 参见刘玉中:《民事诉讼上证据收集之研究》,台北大学 2005 年博士学位论文,第 256—257 页。

<sup>⑤</sup> 参见许士宦:《证据开示制度与秘密保护程序——以证据保全与文书提出命令为中心》,台湾大学 1999 年博士学位论文,第 364—366 页。

<sup>⑥</sup> 参见刘孔中、冯震宇、谢铭洋:《专利证据保全及智慧财产权人相关资讯实体请求权之研究》,载《月旦法学杂志》2014 年第 226 期。

<sup>⑦</sup> 李浩:《民事程序选择权:法理分析与制度完善》,载《中国法学》2007 年第 6 期。

据、事实、请求、程序等),均没有形成差异化的层次和分工性的格局。<sup>④⑧</sup>正是由于不同程序之间的边界缺乏严格和明确的界定,程序的供给在设计指标之外溢出或过剩,给当事人的选择、法官的指挥、程序保障的秩序造成诸多负面影响。

另一方面,这四类强制型证据收集程序也存在功能同一或重合的问题。证据收集程序旨在获得证明力较大的证据材料,功能的差异主要体现在广泛性、精准性和强制性三个方面。证据保全与法院收集证据程序分属于两个极端,前者兼备三项功能属性,而后者存在功能匮乏的问题;书证提出命令正处于两者之间,广泛性不足、精准性较强,因为原则上禁止摸索证明,当事人提出的证据申请必须明确具体。因此,功能强的程序类型就更易排挤功能弱的程序类型,法院收集证据程序因程序保障不足将面临虚化的危险;功能折中的程序类型更容易与其他两端程序类型混淆,书证提出命令在创始之初其实就已经存在定位不清、运行不稳的问题。但是,法律规范没有及时界定四者的功能差异,司法实务也没有形成层次化的功能排序,故四者之间的关系没能从程序竞合乃至冲突走向协调与均衡。

程序参与主体通常基于不同的程序利益进行相应的程序选择,故程序选择的行为逻辑是主体利益的博弈与程序利益的比较。第一,证据收集程序的参与者包括申请人、法院、被申请人(含对方当事人和案外第三人),申请人期望获得广泛的取证范围和多样的取证渠道,被申请人期望拥有对抗性程序权利,而法院倾向于获得更大的自由裁量和程序控制权限。书证提出命令与证据保全为当事人双方设定了基本对等的程序权利与义务,法院收集证据程序满足了法院对权限最大化与责任最小化的期待。但程序竞合更有利于申请人与法院的利益而形成对被申请人的不利局面,故有必要以合理的程序选择重新平衡三方主体之间的利益天平。

第二,程序利益包括体现公正价值的精神性程序利益与体现效率价值的物质性程序利益,前者包括平等、中立、公开、参与等内涵,后者包括时间、金钱、精力、成效等要求。两者的平衡须先根据实体利益的大小配置不同的程序机制,再根据个案当事人的利益偏好与案件的复杂程度赋予当事人程序选择权。<sup>④⑨</sup>由于法院依职权收集涉及国家利益、公共利益、他人合法权益的证据,法院依申请收集涉及当事人私益的证据,那么前者本应配置优于后者、优于书证提出命令的复杂程序机制,但法院收集证据程序却维持着自由化、简约化的构造,成为各方展现偏好与恣意的竞技场。若法院偏好依职权收集,则职权取证程序可能优先于复杂精密的书证提出命令与证据保全;若申请人偏好多元的取证渠道,则职权取证程序可能成为在其他两类程序之后备用补位的程序机制;若再允许法院先后发出调查收集证据的裁定、书证提出的裁定、证据保全的裁定,既显冗余又欠合理。

## (二)书证收集程序选择的思路汇集

若要重新调整证据收集的程序结构与选择顺位,既有的竞合问题解决方案是否具有足够的参考价值呢?其一,民事程序的竞合不同于实体法上的请求权竞合,实体竞合的纾解思路是防范实体利益的双重给付或重复受领,在最大限度内尊重当事人对请求权行使顺序的选择与处分,但不同请求权的行使不能因功能不同而有先后之别。而程序竞合的纾解思路应当是防范程序主体利益与程序价值目标的双面失衡,不同程序之间既有先后行使之别也有同时行使的兼容空间。因为不同程序在要件和效果上的差异使得程序之间有适用范围的不同与优劣对比的区别,当事人会根据利益需求与价值偏向对同类程序的使用排定序位。一旦某一程序已经促成程序利益的实现,则其余程序当然会因丧失程序启动的必要性(或证据收集的必要性)而被程序控制者(法院)及时否决,但程序从申请到决定、从启动到实现会有或长或短的时间差,故当事人同时启动多项程序时可以按照主次关系或吸收合并关系进行有机协调。因此,实体竞合的择一思路只是提供了同时实现的结果性处理方案,程序竞合仍有其先后顺位与同时兼容两项过程性特殊情境。

其二,我国民事诉讼法律规范已经出现的程序竞合及其选择方案主要包括:(1)《最高人民法院关于审查知识产权纠纷行为保全案件适用法律若干问题的规定》第19条为解决行为保全、财产保全或者证据保全的同类竞合问题,规定法院可以根据案件具体情况决定不同类型保全措施的执行顺序,以避免被申请人转移财

<sup>④⑧</sup> 关于书证提出命令的程序要件与制度边界,参见曹建军:《论书证提出命令的制度扩张与要件重构》,载《当代法学》2021年第1期。

<sup>④⑨</sup> 参见翁晓斌:《程序利益保障论》,载《南京大学法律评论》(2010年秋季卷),第220—222、225—227页。



产、毁灭证据致使保全目的无法实现。(2)《最高人民法院关于人民法院执行工作若干问题的规定(试行)》第 55 条第 1 款、第 56 条以及《民诉法解释》第 514 条皆规定实行有限优先原则解决金钱债权的执行竞合,均无担保物权时按照执行法院采取执行措施的先后顺序受偿。(3)《最高人民法院关于人民法院办理执行异议和复议案件若干问题的规定》第 8 条规定案外人对执行标的的异议与利害关系人对执行行为异议竞合时,按照案外人对执行标的的异议程序处理,但同一主体上的程序竞合则应分别审查处理。(4)《民诉法解释》301 条规定按照启动程序的先后选择相应的案外人救济程序,即先启动执行异议时只能申请再审,而先启动第三人撤销之诉后不能再申请再审,但第 299 条规定两者同时受理之后再行审理吸收第三人撤销之诉,但有证据证明恶意串通损害第三人的除外。(5)《最高人民法院关于审理生态环境损害赔偿案件的若干规定(试行)》第 16—18 条规定,因同一损害生态环境行为允许同时提起生态环境损害赔偿诉讼与民事公益诉讼,法院受理之后应当先中止民事公益诉讼案件的审理,待生态环境损害赔偿诉讼案件审理完毕后再就未被涵盖的诉讼请求依法裁判。(6)《民诉法解释》第 370、438 条规定,当事人可以就金钱债权和担保物权选择非讼程序或诉讼程序,但支付令和实现担保物权的特别程序因对方提出实质性争议而终结,只能转化为诉讼程序或另行起诉。

由此可见,我国既有的程序竞合主要针对先后顺位与同时兼容的问题,程序选择方案体现为顺位上的优先型和合并上的吸收型,但这两种方案显然不足以解决强制型书证收集程序的竞合与冗余问题。因为书证提出命令是作为独立的证据收集方式创设的,吸收型方案会在根本上磨灭新设制度的独立意义和特殊价值。书证提出命令在司法实务中已经呈现出范围扩张化、启动职权化、措施强制化的趋向,在我国程序法治尚不健全与程序制度尚不周延的现阶段,很容易挤压其他同类制度的适用空间,抑或被挤压而无法实现制度设计的功能目标。《民诉法解释》与《民事证据新规》对书证提出命令的补充与完善并没有实现优先型方案,反而会搅乱既有证据收集体系的层次性。一方面,程序保障周全的书证提出命令可能排斥法院依申请或依职权的调查取证,且两者在程序外观的相似性也有混淆适用之势;另一方面,缺乏直接强制力的书证提出命令可能在知识产权等特殊案型里遭遇证据保全的排挤,迫切取证的当事人与法院可能放宽对证据保全要件的要求,实现对证据的直接强制执行。

综上所述,强制型书证收集程序在竞合状态的协调与选择上应当运用界定型方法,程序竞合的对照性研究与比较法考察可以帮助划定书证提出命令的制度边界,明确其非一般性、非职权性、非直接强制性的特征。即我国书证提出命令在当前阶段应当采取义务限定化的策略、依申请发出的模式与间接强制的保障。这有利于实现程序设计 with 利益调整的一致性,匡正当事人选择权的行使规则与法院程序指挥权的运行秩序。书证提出命令与法院收集证据、证据保全的程序竞合是我国证据收集迈向体系化的暂时现象,在变迁与博弈的过程中必然会反映出单方申请者与程序裁决者对强制取证的不同利益需求,不同的选择方案也会检验和印证制度的立法组合与利益的实践追求之间存在的潜在间隙。程序利用者会根据利益需求塑造程序的实践功效,通过放大或者限缩程序要件以不当利用不同程序的某一功能或特征。这一实践智慧的确有助于缓解制度不足的困境,但从长远看,证据收集体系的融贯整合必须消磨程序竞合的模糊性与易变性,保证不同程序之间的要件清晰且功能明确。

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**Abstract:** Our evidence collection system has four types of competing procedures, causing difficulties for the parties and the court in the selection and coordination of procedures. In judicial practice, the four types of ex officio orders, including book vouchers, authentication materials, public documents and verification materials, are more suitable to be replaced by proof elucidation. The court still has unique scope and advantages in taking evidence on application. The evidence preservation should be limited in terms of elements and effects, to avoid the exclusion of moderate order for production of documents. According to difference of procedures and benefits, the solutions of procedural competition contain priority type, absorption type and boundary-defined type. The order for production of documents shall be equipped with systematic boundary including attributes of non-authority, non-general, and non-direct mandatory.

**Key Words:** Procedural Competition; Procedural Selection; Order for Production of Documents; Ex Officio Evidence Collection; Evidence Preservation

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(责任编辑:占善刚)

# **Exhibit B-16**

# 当事人申请取证制度的体系性构建

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**内容提要:**现代型诉讼案件中,证据偏在问题日益凸显,负有举证责任的当事人往往面临无法有效取证的问题,导致其承担诉讼不利的后果。顺应实践需求,我国民事诉讼中赋予当事人多种申请取证的渠道,但各申请取证制度体现“各自为政”的碎片化问题,制度适用上无法贯通,而是相互独立和隔离,减损了申请取证制度的实践价值;体系化的缺位造成申请取证制度功能的竞合与挤压,与缓解取证难的制度目标相去甚远。证据提出命令具有立法和效率上的优势,扩张其适用主体至第三人的证据提出命令可以吸收证据调查令的功能,并成为一项统括性的民事证据收集制度。加之申请法院调查取证的兜底性设计,从而构建以扩张后的证据提出命令为优先,申请法院调查取证为补充的我国民事诉讼申请取证体系。

**关键词:**民事诉讼 申请取证 证据提出命令 申请法院调查取证

## 一、问题的提出

在民事诉讼活动的各个环节中,收集证据是核心一环。现行民事诉讼中确立了当事人为主体的取证模式,即当事人在诉讼中需为其主张或反驳的相关事实提供充分的证据支持,否则将面临不利的诉讼后果。同样,法院亦需根据既有的法律规定及经证据证明的有效事实作出裁判。面对大量现代型诉讼案件,我国的取证问题逐渐趋向复杂化,证据的缺失往往误导法院对真实事实的发现,使得裁决因缺乏充分的事实依据而缺乏正当性。因此,如何完整、有效地获取涉案的关键证据对当事人的诉讼利益十分重要。顺应问题的需求,我国从法院超职权主

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义的审判模式破解到当事人主义审判模式的确立,赋予当事人申请取证的权利、方法和手段也逐渐增多。现行立法中最早赋予了当事人申请法院调查取证的权利,在此后的司法解释及地方性文件中又提出了书证提出命令及证据调查令等制度作为补强当事人取证权的保障手段。此外,为防止在紧急情况下证据持有人损毁或隐匿证据,立法上亦规定当事人可通过申请证据保全来第一时间固定和提取证据。诸多制度虽赋予了当事人可供选择的取证权利,但均为“各自为政”的碎片化规定。体系化的缺位降低了申请取证的确定性与效率,且在诉讼过程中,申请人的法律观念、取证意识往往淡薄,重复甚至无效取证的情况多有发生。如何避免当事人取证权的落空,厘清各制度间的适用条件及关系,从而打通这些取证制度间的壁垒,力求形成一个普遍适用的取证体系,发挥其一次申请解决取证难题的作用,是本文争取解决的问题。

## 二、当事人申请取证制度的现状及其反思

现代民事诉讼领域中的取证模式逐渐由职权主义转换为当事人主义,体现在证据收集主体上为以当事人收集为主,法院收集为辅的模式。目前立法中,当事人收集证据的方式主要为自行取证及申请取证。其中,由于自行取证缺乏强制力,且取证对象尤其涉及国家机关及国有企事业单位、社会团体等准官方机构,当事人很难向这些单位或团体收集证据,往往面临被调查人拒绝协助配合取证的困境,故转而向法院寻求助力,通过申请取证的通道,即申请法院调查取证或证据调查令、书证提出命令、证据保全等方式进行取证。本文认为,为构建民事诉讼当事人申请取证体系,有必要对现有几种申请取证制度的现状予以厘清。

### (一)当事人申请取证制度的适用现状

1. 申请调查取证。在我国,民事诉讼当事人申请法院调查取证的相关规定散见于《中华人民共和国民事诉讼法》(以下简称《民事诉讼法》)、《最高人民法院关于民事诉讼证据的若干规定》(2019年修正)(以下简称新《证据规定》)、《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》(以下简称《民诉法解释》)等相关法律文件中。2002年《最高人民法院关于民事诉讼证据的若干规定》(以下简称旧《证据规定》)颁布实施后,收集证据的权利和责任回归当事人,且强化了“谁主张谁举证”的原则:“当事人对自己提出的诉讼请求所依据的事实或者反驳对方诉讼请求所依据的事实有责任提供证据加以证明。没有证据或者证据不足以证明当事人的事实主张的,由负有举证责任的当事人承担不利后果。”<sup>①</sup>考虑当事人及其诉讼代理人可能会遇到因客观原因不能自行收集证据的情形,旧《证据规定》第3条<sup>②</sup>及2012年《民事诉讼法》第64条<sup>③</sup>均规定,当事人及其诉讼代理人因客观原因不能自行收集的证据,可以申请人民法院调查收集,正式赋予当事人申请法院调查取证的权利,但该规定仅给予了赋权性的原则规定。2015年《民诉法解释》第94条将该权利具体化,明确了当事人可以申请法院调查取证的几种具体情形,除此之外,再无相关完善性规定。比如,从当事人角度来看,未规定其提起调查取

① 参见《最高人民法院关于民事诉讼证据的若干规定》(2002年)第2条。

② 参见《最高人民法院关于民事诉讼证据的若干规定》(2002年)第3条第2款:当事人因客观原因不能自行收集的证据,可申请人民法院调查收集。

③ 参见《中华人民共和国民事诉讼法》(2012年修正)第64条第2款:当事人及其诉讼代理人因客观原因不能自行收集的证据,或者人民法院认为审理案件需要的证据,人民法院应当调查收集。



证的具体规则、方式和救济程序;从法院角度出发,缺乏对兜底条款中“客观原因”统一的界定标准,导致法院对启动调查取证的标准不一,如此法官被赋予较大的自由裁量权,易造成实践中主观任意性强,裁判尺度不统一的问题。再者,对调查取证的操作程序缺位,如法院如何完成调查取证的过程及在何期限内完成等问题,未作具体规定。因此,该制度可以说是一项缺乏程序和制度保障的宣示性权利,导致当事人即便享有权利,该权利也无法落地。

为了解申请法院调查取证的实务现状,本文重点对2015年《民诉法解释》施行后的相关裁判文书进行统计分析,在“元典智库”案例研判库检索分析栏中以“申请法院调查取证”为关键词,点击“民事”案件类别,选取2022年及2023年两个结案年份进行检索,获取相关的裁判文书数量分别仅为214篇、155篇。截取两个年份中各50篇裁判文书详细分析梳理,其中,2023年法院驳回申请的案件数量约占74.54%;2022年法院支持当事人申请的约占21.67%。从数据反映出,实践中法院支持当事人申请调查取证的案件数量较少,源于《民诉法解释》第95条规定的对与案件“无关联”“无意义”或者“其他无调查收集必要”的申请,法官应当拒绝调查收集。限制法院调查取证的范围,旨在发挥“过滤”功能,但这种模糊的“三无”标准在实务中有被滥用之嫌,导致当事人调查取证的申请,绝大多数被法院驳回,使当事人不得不转而寻求其他手段取证。一项制度的实践价值取决于其在实务中发挥功效的大小,如不能有效达成预设目标,此项制度将在很大程度上被利用者搁置,成为休眠条款。

2. 申请证据调查令。1996年,上海市第一中级人民法院开始试行证据调查令制度,授权当事人及其代理律师持法院核发的调查令可向案外第三人调查收集证据,<sup>④</sup>这是在我国司法实践中自发生成的一项本土化制度。由于该制度具有法院授权的“背书”,加大了代理律师取证的权威性,达到了减轻法院取证负担、增强当事人自助取证的实践功效,故逐渐受到各地法院的推崇。截至2022年年底,全国范围内至少有26家高级人民法院出台实行或试行证据调查令制度的相关细则或规定。<sup>⑤</sup>经过长期在各地法院的实践探索,证据调查令制度取得了较为显著的成效:2012年8月至2013年9月上海法院立案调查令的成功调查率为84.76%,调查后成功立案率为94.21%。<sup>⑥</sup>2013年9月至2017年5月安徽省法院签发调查令9488份,取证成功率为89%。<sup>⑦</sup>2017年7月28日至2018年7月广州两级法院共签发3356份调查令,签发率超过99%,成功取证的比例超七成。<sup>⑧</sup>由此可见,在申请法院调查取证制度缺乏完善规定的制度背景下,证据调查令制度在实践效果上极大地弥补了申请调查取证制度的不足,尤其为当事人收集案外第三人持有的证据开辟了新路径。但该制度毕竟尚处于试行阶段,在实务运行中暴露出不少明显问题:

④ 参见曹建军:《论民事调查令的实践基础与规范理性》,载《法学家》2019年第3期。

⑤ 参见刘学在、罗晶:《论民事调查令制度的运行障碍及完善》,载《广西政法管理干部学院学报》2023年第5期。

⑥ 参见符向军:《立案调查令:提高司法效率》,载《人民法院报》2013年11月13日,第2版。

⑦ 参见赵风暴:《民事证据调查令制度的司法适用路径探析》,载《兰州大学学报(社会科学版)》2018年第3期。

⑧ 参见王楠、钱可屏、吕佳娜:《广州实施“律师调查令”一年:签发率超过99% 成功取证比例超七成》,http://news.ycwb.com/2018-08/31/content\_30079410.htm,访问日期:2023年5月17日。



首先,长期以来,证据调查令缺乏统一的立法规定,相关内容由各地法院以地方法律文件自行规定,呈现“各自为政”的局面。本文考察梳理了浙江、广东、吉林等11个省份高级人民法院出台的关于证据调查令的规范性文件,其在申请主体、持令主体、适用阶段、适用证据种类,以及具体运作流程等方面各不相同。比如,就申请主体来看,各省高级人民法院普遍将当事人及代理律师列为申请主体,但也存在排除当事人,仅代理律师能作为申请主体的地区,如广东、吉林等省份;此外,河北省高级人民法院还规定了律师代为申领调查令的,必须有申请执行人的特别授权。<sup>⑨</sup>就申请阶段来看,上海、广东、浙江、湖南等高级人民法院实行全方位调查令制度,其在起诉、审理、执行阶段均可申请证据调查令;辽宁省高级人民法院规定可在审理、执行阶段适用调查令;福建、河北、青海等高级人民法院规定仅在执行阶段可申请。就证据范围来看,各地对于书证、电子数据、视听资料等证据种类的规定较为一致,但部分法院缩小其范围仅限于书证,如贵州等省份;辽宁、广东等高级人民法院却扩大至鉴定意见或勘验笔录;河北、河南、青海等省份对证据范围的认定无特殊的排除形式;陕西省高级人民法院未明确规定证据种类及适用范围,交由法官个案认定。此外,各地调查令在规范名称、审签规则、告知形式等具体运行程序方面更存在较大分歧。总体来看,由于缺乏上位法的统一协调,各地证据调查令的规范内容差异较大,给代理律师异地办案带来了极大阻碍,其权威性和实效性也未能有效体现。其次,尽管证据调查令的实施方式是由律师代为取证,但在实际操作中,并未达到节省法院司法资源的效果。按照各地调查令规范的要求,法官必须监督和管理每一份证据调查令在申请、审查、签发到执行、回收、归档的每一个环节,同时需要随时应对被调查人的电话核实、持令人的询问说明、是否懈怠或滥用权利等临时情况,<sup>⑩</sup>此过程无疑会加重法院的负担,耗费的司法资源甚至多过其亲自取证。同时,在实施证据调查令过程中,为避免双方之间因质证抗辩贻误时机而造成持证方可能毁损证据的风险,现有规定明确法院在决定是否核发调查令时,无须双方到场辩论,仅听取申请方一面之词即可作出决定。因此,在证据调查令到达被申请人,并阐述理由表示无法提供相关证据时,法院才可获知双方的冲突意见,对自己签发调查令的合法性产生疑问。这种流程设计不仅可能使法院在审查初步阶段就形成偏见,来回反复亦可能因后续调整反而降低取证的整体效率。因此,证据调查令虽在形式上替代了法院外出调查、亲自取证,但在实际运行中是否真正能节约司法资源,有待考量。最后,核发证据调查令仅限于代理律师申请取证的情形,在实践中无法解决当事人无代理律师的取证问题,局限性较明显。

3. 申请书证提出命令。2015年《民诉法解释》第112条引入了书证提出命令制度,旨在解决书证在对方当事人控制之下时,承担举证证明责任当事人取证难的问题。该制度缓解了书证偏在情形下当事人无法有效取证的困境,成为申请法院调查取证制度外又一强制性的取证手段。新《证据规定》进一步细化了书证提出命令,对其申请条件、审查内容、客体范围及法律后果均作出了明确规定。通过在“元典智库”法律数据库以“书证提出命令”为关键词进行检索,截至2024年6月,与该制度关联的裁判文书共计737篇,从时间节点来看,新《证据规定》出

<sup>⑨</sup> 参见河北省高级人民法院、河北省司法厅《关于执行程序中适用律师调查令的若干规定(试行)》第4条。

<sup>⑩</sup> 参见曹建军:《论民事调查令的实践基础与规范理性》,载《法学家》2019年第3期。



台前的2017年,涉及的裁判文书总量仅为3篇,出台后的2020年及2021年,裁判文书数量上升至557篇。这一数据变化反映出,在书证提出命令制度诞生之初,其在司法实践中鲜有适用,成为“沉睡的条文”。在新《证据规定》的细化性内容生效之后,随着证据种类向电子数据、视频资料等的扩张,书证提出命令制度在司法实践中的适用频次也明显提升。

不过,我国书证提出命令的自身不足限制了该制度的适用。尤其是主客体适用范围较窄,造成了该制度适用的诸多困境。首先,提出义务的主体范围过窄,仅限于对方当事人,在案外第三人控制下的证据无法适用。然而,在司法实践中经常出现案件的关键证据处于案外第三人掌控下的情形,<sup>⑪</sup>因此若将主体范围仅限于对方当事人,无疑使该制度在实践中的应用率大打折扣。其次,被调查的客体即证据范围过窄,限于书证、电子数据及视听资料。创立之初,书证提出命令制度的证据种类仅限于书证,新《证据规定》第99条将其范围扩张到视听资料、电子数据等,体现出立法者不再注重证据载体的外在表现形式,更多关注证据所携带的能对案件事实进行证明的证据信息。<sup>⑫</sup>证据范围的扩张虽使书证提出命令适用频次提升,但与其他申请取证制度的适用数量相比,占比仍较低。笔者在“元典智库”案例库中,分别以“申请调查令”“申请法院调查取证”为关键词进行搜索,选取适用书证提出命令频次最高的2020年及2021年进行检索,相关裁判文书数量分别为4472篇、1212篇,明显高于书证提出命令在该两年的适用量。

为应对知识产权侵权案件的爆炸式增长,2020年最高人民法院发布《最高人民法院关于知识产权民事诉讼证据的若干规定》(以下简称《知产证据规定》),其中第24条、第25条确立了知识产权诉讼中证据提出命令制度。知识产权的权利客体具有无形性,其价值及收益都难以准确评估,且确定赔偿数额的重要证据大多控制在侵权人或第三方手中,负有举证责任的当事人若无法顺利获得与己有利的证据,将面临损失较大的赔偿利益。为此,证据提出命令在普通诉讼书证提出命令的基础上,不再对法院责令对方当事人提出证据的种类进行限制,以保障举证弱势一方当事人顺利取证。从目前立法上来看,证据扩张的适用领域极为有限,仅适用于知识产权侵权或生态环境侵权的特殊案件中。

4. 申请证据保全制度。证据保全制度是指证据有可能灭失或以后难以取得时,法院根据当事人或利害关系人的申请或者依职权采取措施,对证据加以固定和保护的制度。<sup>⑬</sup>前文所述的三项制度均属申请收集证据的制度,而证据保全并非证据收集的直接方式,其主要功能为在证据存在灭失风险或未来难以获取的情况下,作为临时固定和保存证据的手段。由于证据保全具有直接强制力,故适用范围及条件需特殊规定。《民事诉讼法》第84条将其申请前提限缩为“情况紧急,在证据可能灭失或者以后难以取得的情况下”。2000年之前,证据保全的适用比例非常低,法院在司法政策上倾向于高门槛,严格控制证据保全的适用条件,特别是在诉前证据保全中的适用,是罕见的例外情况。近年来,我国在专利侵权等知识产权诉讼案件中大幅增

⑪ 参见山东省青岛市中级人民法院(2020)鲁06民终3107号民事判决书。

⑫ 参见吴乾坤:《新民事证据规定下文书提出命令制度研究》,中南财经政法大学2022年硕士论文,第38页。

⑬ 参见江伟、肖建国:《民事诉讼法》(第9版),中国人民大学出版社2023年版,第220页。



加了适用证据保全的情况。当事人若无法提供充足、完整的证据来证明自己的实际损失或对方因侵权行为所获得的非法利润,则由法院在规定赔偿的额度内酌定赔偿。但我国知识产权立法中规定的赔偿额较低,难以覆盖甚至远远低于被侵权人的实际损失,无法充分反映侵权行为的损害性,极大削弱了被侵权人的索赔权益,因此,当事人经常转道通过申请证据保全获取关键证据。例如,为避免侵权人销毁或隐匿书证,法院在裁定保全后会直接扣押与侵权行为及数额认定有关的书证,或在被申请人拒绝配合保全时,双方当事人及其代理人均在场的情况下,对书证进行复印、拍照、摘录,当场进行证据收集和调查,如此便在固定保存证据的过程中,间接达到收集证据的目的。

## (二)当事人申请取证实践的理论反思

在当事人主义的证据收集模式下,法律赋予当事人多种申请取证的手段,无疑体现出程序法治的进步。但除证据保全制度在特殊情况下适用外,其余几种取证制度在适用范围及具体规则上均存在一定重叠,相互间关系模糊,导致实践效果不佳。主要体现为,申请法院调查取证与申请书证提出命令、证据调查令的适用混乱。无论是最高人民法院提出的书证提出命令抑或各地出台规定的证据调查令,其本意均是希望减轻法院调查取证的负担,解决其面临外出调查、实际取证的问题,将司法资源回归到案件审理的过程中。但就前者而言,我国并未设置完善的书证提出命令制度,以至于可以取代申请法院调查取证。如此便造成弱化的书证提出命令与申请法院调查取证之间关系模糊的问题。在实践案例中,常常出现当事人同时向法院申请调查取证及书证提出命令的情况,法院应如何处理,立法无明确规定,如此便增加了取证结果的不确定性。对于证据调查令而言,我国各地方的证据调查令大多规定其申请必须由代理律师提出,法院审查签发后由律师持令到被调查单位进行调查。问题在于证据调查令对于法院调查取证而言,是律师替代其取证具有公权性质的衍生关系,还是为律师新创设的具有私权性取证权的独立关系?在实践中,两种制度适用较为混乱,各地调查令虽零星规定了被调查人不予配合取证的不利后果,但由于缺乏统一的上位法依据,强制性较弱,被调查人不配合的情况依然较为常见。由于持令律师没有现场处罚权,一旦持调查令取证不成,当事人及其代理律师极可能会折回法院,不得不再次申请法院调查取证,如此往复反倒增加了法院的取证负担,降低了取证实效。

此外,证据调查令制度局限性明显,是否考虑被更具周全规定的书证提出命令吸收?考察现行立法中关于书证提出命令的规定及各地证据调查令的规范内容,两者在适用情形、申请时限、审查内容、签发等方面都较为类似,存在功能适用的竞合。相较之下,最突出的区别在于提供证据义务主体的不同。《民诉法解释》将书证提出命令的被调查对象仅限于持有书证的对方当事人,而各地证据调查令普遍将其适用的义务主体确定为案外第三人。2016年《最高人民法院关于民事诉讼证据的解释(征求意见稿)》(以下简称《证据解释稿》)中提出禁止向对方当事人签发证据调查令,表明其倾向于分别发挥面向案外第三人的证据调查令与面向对方的书证提出命令制度互补的程序定位。但本文认为,鉴于证据调查令在实际运行中暴露出较为明显的局限性,两者互补发挥申请取证的程序性定位有待商榷。由于两者形成竞合,且书证提出命令更具统一的立法规定和周延的程序保障,若参照大陆法系国家将取证范围扩大到



第三人和书证以外的其他证据种类,那么从长远来看,是否可以考虑将两者整合为一项申请证据收集的制度。

制度间的竞合或冲突,直接导致实践中适用的混乱。对于制度利用者当事人而言,这种状况不利于当事人及时选择最合适的取证方案;即使先后分别提出不同取证的申请,也会贻误取证时机。对于法院来说,虽然最了解受诉案件的较优取证方案,但如果当事人的取证选择不当,法院往往也无能为力;对于当事人先后提出不同取证申请的情况,不仅给法院增加了审查负担,造成多重审查、司法资源无端浪费的困境,而且在贻误较优取证方案后,法院的取证申请审查程序可能变成无用功,无助于案件事实的认定。因此,理想的方案或许是在诸多申请取证制度中,明确申请法院调查取证的地位,以书证提出命令为蓝本,吸收证据调查令并对其进行扩张,萃取出最优的申请取证制度,实现通过当事人的一次性申请,以及法院的一次性审查和释明,实质性解决当事人多种取证手段之间的冲突或“叠床架屋”问题,从而减轻法院的审查负担,减少当事人诉累,并真正落实民事诉讼证据适时提出主义。

### 三、可能的解决方案:证据提出命令的确立

我国现有申请取证制度存在的困境,不仅在于各取证手段自身的弊端,更存在制度间的竞合与碰撞。由于缺乏内在协调贯通的完整体系,导致当事人及其代理人甚至法院都无法明确各个制度间的申请“门槛”,造成取证混乱的局面。针对这一问题,可借鉴域外国家的证据收集模式,在我国诸多申请取证制度中,梳理各制度间的关系,寻求最大公约数,萃取我国具有普遍共通性的取证制度,必要时进行适度整合与范围扩展,令其成为诸多取证手段中的代表性制度,从而避免多种制度层叠混乱的问题。本文认为,将知识产权诉讼中的证据提出命令一体适用于民事诉讼中,使之成为一项普适性的申请取证制度,兼具书证提出命令、证据调查令的全部功能,避免现有申请取证制度间的冲突和竞合,由此确立我国民事诉讼中统一的证据提出命令制度,或许是可行的解决方案。

#### (一)两大法系的借鉴

1. 从文书提出命令到证据开示。在大陆法系国家,与近代自由资本主义的市场经济法治以及民法确立的私权自治和鼓励交易相适应,近代民事诉讼法确立了书证为民事诉讼“证据之王”,并建立了以文书提出命令为中心的当事人申请取证体系,取证功能强大且覆盖面广。在取证主体方面,德国《民事诉讼法》第421条规定了当事人向法院申请文书提出命令的条件和程序“举证人断定证书在对方当事人手中时,应在申请证据的同时,申请命令对方当事人提出证书”,<sup>⑭</sup>此外,还将取证的义务主体有限扩张至案外第三人,但对第三人提出命令提交证据的申请要通过新的诉讼程序进行。该做法虽有利于维护第三人的合法权益,却妨碍了对案件事实的发现,加重诉讼过程的繁琐,因而未被广泛借鉴。在日本和我国台湾地区,直接规定了获取第三人持有的文书只需满足文书提出之条件并向法院提出申请即可。<sup>⑮</sup>例如,日本《民事诉讼法》第225条规定:“第三人不遵从文书提出命令的,裁判以决定的形式对其处以20万日元

<sup>⑭</sup> 参见《德意志联邦共和国民事诉讼法》,谢怀栻译,中国法制出版社2001年版,第104页;《德国民事诉讼法》,丁启明译,厦门大学出版社2016年版,第102页。

<sup>⑮</sup> 参见程书峰:《文书提出命令制度研究与本土借鉴》,载《社会科学家》2018年第5期。



以下的罚款。”<sup>①⑥</sup>我国台湾地区“民事诉讼法”第347条规定:“法院应认证之事实重要且举证人之申请正当者,应以裁定命令第三人提出文书或定由举证人提出文书之期间。”<sup>①⑦</sup>在文书范围方面,最初在限制主义立法理念下,文书提出命令的客体范围均由法律规定具体列明,一般包括引用文书、权利文书、利益文书等,<sup>①⑧</sup>故在审理过程中,法官仅需依照对应的法规,审查当事人的申请是否在罗列的法定范畴内即可。随着现代型纠纷复杂化,当事人之间强弱地位悬殊、证据偏在的情形日渐增多,立法者逐渐认识到限制主义的局限性,于是文书提出义务从限定义务逐步转变为一般性公法义务。此外,证据范围亦得到充分扩张。例如,日本新民诉法规定:“除上述三种文书及公务文书外,如果文书不具有类似于证言拒绝权的情形及专为文书持有人所利用的情形,文书持有人不得拒绝提出所持有的文书。”<sup>①⑨</sup>我国台湾地区更是直接将能发挥类似文书功能的物件准用书证的规定。在违反提出义务的法律后果方面,德国法中依据主体地位,区分规定。如果证据控制人为案外的第三人,法院无权直接强制其提出书证,需通过另行提起文书给付之诉来解决。日本和我国台湾地区则以高额的罚款作为惩罚性措施。

英美法系国家对抗制诉讼模式下,诉讼程序体现出显著的对抗式特性,双方当事人积极围绕案件的核心争议展开诉讼攻击与防御,推动揭示案件事实的真相,其中证据开示环节被视为民事诉讼制度中最重要的步骤。反映在民事诉讼的证据收集上,由一方当事人直接向对方或第三人提出开示证据的要求,只有在发生争议时,法院才会适当介入。<sup>②⑩</sup>按照证据开示的要求,双方当事人互负证据开示的权利与义务,可以对包括文书证据在内的证据进行广泛的、双向的证据开示。在程序架构上,双方当事人在合作和对抗过程中推进诉讼,法官始终处于居中、旁观的立场;在开示范围上,与诉讼请求或抗辩相关的证据皆可以请求开示,在有正当理由时还可以申请法院命令开示与诉讼标的有关的证据;<sup>②⑪</sup>在约束措施上,通过法院的管理权防止证据开示被滥用,规定开示范围受比例原则的限制、法院依申请或依职权限制开示的频率和范围、当事人可以向法院申请发出保护性命令以禁止开示、限制开示特定事项或特定开示方法等。<sup>②②</sup>

2. 域外的借鉴。对域外制度的研究,不能简单借鉴或移植法条进行程序改革,而应当以我国的司法制度运行为背景。<sup>②③</sup>从取证模式来看,应构建代表性取证制度。如上文所述,在大陆法系国家有限的取证制度中,文书提出命令为取证体系的中心,另一项重要的取证制度为证据保

<sup>①⑥</sup> 参见《日本民事诉讼法典》,曹云吉译,厦门大学出版社2017年版,第72页。

<sup>①⑦</sup> 参见施凯文:《文书提出命令的扩张式设计——与调查令制度整合》,载《广播电视大学学报(哲学社会科学版)》2021年第4期。

<sup>①⑧</sup> 参见程书峰:《文书提出命令制度研究与本土借鉴》,载《社会科学家》2018年第5期。

<sup>①⑨</sup> 参见熊跃敏:《日本民事诉讼的文书提出命令制度及其对我国的启示》,载《刑事司法论坛》2002年第4期。

<sup>②⑩</sup> 参见孙晨曦:《论民事诉讼当事人证据收集手段之扩充》,载《社会科学家》2019年第4期。

<sup>②⑪</sup> 参见陈杭平:《“事案解明义务”一般化之辨——以美国“事证开示义务”为视角》,载《现代法学》2018年第5期。

<sup>②②</sup> 参见曹建军:《论书证收集程序的现实困境与模式选择》,载《证据科学》2019年第5期。

<sup>②③</sup> 参见任重:《民事诉讼协调主义的风险及批判——兼论当代德国民事诉讼基本走向》,载《当代法学》2014年第4期。



全。德国和日本虽通过修法扩大了证据保全的适用范围,但由于证据保全裁定后不能强制执行,无法要求证据保全人提交某项证据,因此在协调两者的关系时,德国法仍强调文书提出命令的中心地位。日本法和我国台湾地区允许证据保全和书证提出命令相互嵌合,即在证据保全中嵌入书证提出命令,两者可以进行无缝衔接,无须重新申请,从而减少程序间的空转。由此可见,大陆法系国家的书证搜集手段主要以文书提出命令为中心,证据保全为保障。英美法系国家证据开示制度的形成发展,带有强烈的政治、经济、文化等元素印记,具有显著特殊性。该制度虽在具体内容上对我国取证体系的构建鲜有借鉴之处,但至少可以肯定,英美法系国家在取证模式上,亦是有集中和普遍适用的取证制度,且在立法上较为完善,尽量避免多种制度冲突碰撞、无效取证的问题。对于我国而言,也应在多种申请取证制度中寻找可整合扩展的共通之处,提炼出具有普遍适用的代表性申请取证制度。

从制度内容来看,应扩张适用书证提出命令。机械式地引入大陆法系国家取证体系中的某种制度绝非明智,重点在于通过对既有制度的兼容并蓄来达到预期目的。借鉴大陆法系国家较为成熟的制度共识和我国的既有框架,本文认为,应落脚在对书证提出命令制度的改造和扩容上,作为我国民事诉讼中当事人申请取证制度的最大公约数。改造我国的书证提出命令,需大幅扩张其适用范围。具体而言,其一,扩大证据种类至物证。从上述比较法规定来看,两种制度可提出的证据种类均体现出适用范围的最大化。书证提出命令的初衷在于保障举证责任人顺利收集到对方当事人掌控的关键证据,在该功能的设计背景下,对证据范围的适度扩大十分必要。有学者提出,为充分发挥书证提出命令的最大效用,建议再扩张其客体范围,将物证纳入,<sup>②</sup>如许多物件能体现某种思想或事实的内容,无异于书证功能,可扩大适用。本文亦倾向该观点,若将物证纳入该制度范围,将其名称修改为“证据提出命令”更为合适。其二,扩大义务主体至第三人。无论是大陆法系国家的文书提出命令抑或英美法系的证据开示,均未限制提供证据的义务主体,当然我国立法出于考虑案外第三人没有积极地提供义务而维护其权益的出发点值得肯定,但不应牺牲该制度的设立价值。在实践中,大多案件的关键证据被案外第三人控制,若仅将义务主体范围限定于对方当事人,无疑将大幅减少该制度的适用频率。鉴于此,应当借鉴大陆法系国家文书提出命令制度,将书证提出命令的义务主体范围扩张至案外第三人,同时设置相应的保障程序及约束措施对造成第三人合法权益受损的行为予以救济。

## (二)我国证据提出命令的确立

前文所及,应在对书证提出命令改造和扩容的基础上,构建我国民事诉讼中当事人申请取证制度的最大公约数。证据范围扩张后的书证提出命令,即证据提出命令,实际在我国现行法上已有所规定,2020年《知产证据规定》中确立了证据提出命令制度。根据该规定第24条,承担证明责任的当事人有权凭证据提出申请,若申请理由充分,人民法院应责令持有证据的对方当事人提交该证据。据此可知,证据提出命令的义务主体与书证提出命令一致,为对方当事人,不包括案外第三人。在客体范围方面,突破了普通民事诉讼中对书证提出命令证据范围的

<sup>②</sup> 参见施凯文:《文书提出命令的扩张式设计——与调查令制度整合》,载《广播电视大学学报(哲学社会科学版)》2021年第4期。



限制,规定当事人可申请提交的证据范围不限于书证,但具体包含哪些证据,未予明确。本文以为,从“证据”的字面含义推定,理应包括现有民事诉讼中对证据的八种法定分类,但需排除带有主观性质的当事人陈述、证人证言,以及有特殊规定的鉴定意见和勘验笔录。由此可见,证据提出命令所涵盖的证据主要是指书证、物证、视听资料及电子证据等证据种类。同时,该规定第25条亦明确了被申请人无正当理由拒不提交证据,则被课以证据所涉证明事项的主张成立的不利法律后果。此外,在生态环境侵权诉讼中,证据提出命令制度亦可适用于书证以外的其他证据。《最高人民法院关于生态环境侵权民事诉讼证据的若干规定》(以下简称《生态环境证据规定》)第26条规定,“对于证明环境污染、生态破坏案件事实有重要意义的书面文件、数据信息或者录音、录像等证据在对方当事人控制之下的,承担举证责任的当事人可以根据《民诉法解释》第112条的规定,书面申请人民法院责令对方当事人提交。”<sup>⑤</sup>由此可见,现行法的取证框架是以普通民事诉讼中书证提出命令制度为基本,基于知识产权或环境保护等特殊领域的取证问题,将提出证据的范围扩大至物证。这种取证框架不尽合理,应当予以改造和重塑,本文认为,基于分析证据提出命令的规定内容及适用规范,其可以看作升级的书证提出命令。在民事诉讼中应当确立普适性的证据提出命令制度,取消特殊领域的适用限制,一体适用于我国民事诉讼证据中,并将该制度的义务主体扩张至案外第三人。如此,从取证功能的角度出发,证据提出命令可实现现有取证手段整合后的功能,成为我国申请取证制度的核心。

首先,为申请法院调查取证的优先通道,解决了两者适用冲突的问题。对于法院来说,是否予以调查取证完全依赖于法院自由裁量,且该制度未规定制裁性的违法后果。而证据提出命令实质上不仅为证据持有者设置了关键证据的提出义务及不利后果,亦为法院设定了相应的义务,即若当事人申请证据提出命令的要件符合法律规定,法院则必须作出责令对方当事人提交证据的命令。故从实施效果来看,具有制裁性违法后果的证据提出命令明显高于未规定不利后果的申请法院调查取证,因此若当事人的申请符合证据提出命令的要件,当然可作为优先的取证通道来确保当事人有效取证。

其次,扩张了书证提出命令的证据范围,提高该制度的实践价值。如前文所述,我国现有的书证提出命令制度是一项弱化的取证制度,不足之处在于对义务主体及证据范围的限缩,无法有效实现书证提出命令的功能。相较于书证提出命令,证据提出命令制度突破了当事人可申请证据范围的限制,将涵盖的证据扩张至书证、物证、视听资料、电子数据等证据种类,可大幅提高其在司法实践中的适用率,充分发挥制度价值。

再次,与证据调查令整合,形成功能全面的核心制度。有学者提出,将面向案外第三人的证据调查令制度与面向对方当事人的书证提出命令制度相互配合,<sup>⑥</sup>形成我国申请取证制度的核心制度。对于此种建构方式,本文赞同其基本思路,但在具体路径上,倾向于将证据调查令制度整合到证据提出命令制度之中。深层原因在于,证据调查令虽经历二十多年的试点工作,但至今未统一,各地调查令制度在程序设计上不尽相同,证据种类及具体范围无法共通适用,

<sup>⑤</sup> 参见《最高人民法院关于生态环境侵权民事诉讼证据的若干规定》第26条。

<sup>⑥</sup> 参见曹建军:《论民事调查令的实践基础与规范理性》,载《法学家》2019年第3期。



且其仅限于律师代理的情形,局限性明显,难以长期成为我国申请取证制度的核心手段。证据调查令的适用主体为案外第三人,证据范围未作限制,证据提出命令经扩张适用后,可涵盖对义务主体的要求和证据范围的收集。因此,以证据提出命令制度为“本”,吸纳证据调查令制度之“长”,证据调查令被功能全面的证据提出命令整合吸收,未尝不可。

最后,证据保全制度为特殊适用,并非首要选择。两者虽在诉讼结果上可能一致,但功能及运行路径差异较大。证据保全制度的设立侧重于在紧急情况下采取强硬措施将具有灭失风险或难以取得的证据第一时间固定保存,避免无法获取事实真相。但由于证据保全需要申请人提供担保,门槛及成本过高,特别是异地保全,势必加大司法机关及申请人的程序负担,亦会导致诉讼进程的延误和复杂,因此并非为普通诉讼案件中当事人及法院取证的首要选择。而证据提供命令则是针对证据偏在于对方当事人,在举证责任人无法获取证据的情况下,法院直接责令对方提供关键证据,偏向于解决申请人举证难的问题。因此,在申请取证的案件面临两种制度竞合的情况下,显然应优先选择具有直接针对性优势的证据提出命令来取证。

#### 四、我国申请取证制度的体系性构建

证据提出命令扩张适用于第三人,此方案与大陆法系国家做法基本一致,不同的是,我国《民事诉讼法》第67条、《民诉法解释》第94条还明确了申请法院调查取证作为兜底性取证权的保障。结合证据提出命令的核心地位,本文认为,根据我国现有的取证模式及制度规定,宜构建以扩张后的证据提出命令为优先,兜底性的申请法院调查取证为补充的我国当事人申请取证体系。

##### (一)扩张证据提出命令制度的主体范围

现有的证据提出命令制度仅扩张了证据范围的适用,不足之处在于未扩大适用于第三人持有的证据。当然,该制度义务主体的扩张并非为了满足共通适用的功能而强行扩张,其主体扩张存在合理依据。从立法来看,我国《民事诉讼法》第70条规定,相关单位和个人负有协助法院调查取证的法定义务。因此,要求掌握关键证据的案外第三人通过提交证据来协助法院调查,合乎逻辑。此外,最高人民法院明确,之所以未规定第三人文书提出命令,是因为文书提出命令是由司法解释创设,而司法解释存在不能为诉讼外第三人设定诉讼法上的义务之局限性。<sup>②7</sup>据此从反面推知,最高人民法院亦肯定了文书提出命令适用主体向第三人扩张的必要性。<sup>②8</sup>也有学者指出,对于证据在第三人控制下的,举证人可以从现行的证据保全制度、证据调查令,申请法院调查取证等证据收集的相关规定中找寻应对方法,如调查令制度可弥补证据在第三方控制下的取证问题,无须扩大书证提出命令的义务主体。<sup>②9</sup>本文认为,现有制度难以达到向第三人取证的理想效果。就当事人申请法院调查取证而言,法官对“客观原因”的把握有较大的自由裁量,且缺乏细化规定,为规避风险,实践中多有消极取证之嫌,向没有直接提供义

<sup>②7</sup> 参见最高人民法院民事审判第一庭:《最高人民法院新民事诉讼证据规定理解与适用》,人民法院出版社2020年版,第435页。

<sup>②8</sup> 参见刘学在、罗晶:《论民事调查令制度的运行障碍及完善》,载《广西政法管理干部学院学报》2023年第5期。

<sup>②9</sup> 参见王杏飞、刘洋:《论我国民事诉讼中的律师调查令》,载《法治研究》2017年第3期。



务的案外第三人进行取证更是少之又少。证据调查令缺乏统一的上位法依据,程序保障较弱,若案外第三人拒绝提供证据便难以实现取证需求。而启用证据保全往往以证据可能“灭失或以后难以取得”的紧急情况为适用前提,难以将该制度作为向第三人取证的普遍性通道。相较之下,证据提出命令的公法介入程度更深,程序保障更强,对提出义务人的不利后果更具震慑力,因此扩张证据提出命令的主体至第三人更符合现实需求。

## (二)明确证据提出命令制度的适用顺位

确立了证据提出命令的核心地位并对其进行合理扩张后,结合我国对当事人申请法院调查取证的兜底性规定,对我国申请取证制度体系性构建的基本思路则是厘清两者间的关系,明确实践中适用的顺序。证据提出命令的实现即要求法院责令证据持有人提交相关证据,多数情况下与申请法院调查取证的取证过程一致。在实践中,常常出现当事人同时向法院提起申请法院调查取证及证据提出命令的案例,<sup>⑩</sup>如岳阳远鹏置业公司与岳鑫泓房地产公司合资、合作开发房地产合同纠纷一案中,<sup>⑪</sup>原告负有举证责任,但证据偏在于被告控制下,故其向法院提交了《申请调查取证书》的同时请求法院责令对方提交《司法审计》的书证申请书,法院发出民事裁定责令被告提交项目建设施工材料、土地使用权证、房屋产权信息、项目财务资料、会计账本、凭证、项目投资、成本、工程结算情况、收益情况等书证,以查明财务、收支、成本、利润、销售等情况并进行司法鉴定。被告逾期未提交的,就该裁定申请复议,法院裁定驳回复议申请。可见在此情况下法院多遵从特别法优于一般法的原则,在当事人同时提交两种取证申请的情况下,优先以证据提出命令的要件审核。本文认为,证据提出命令与具有兜底性质的申请法院调查取证存在特殊与一般的关系,体现在

首先,从实施目的来看。申请法院调查取证具有双重功能,直接目的在于填补申请人因权利受限或涉及证据特殊等客观因素限制其自行取证的空白,避免当事人取证权的落空。间接目的则着眼于平衡各方主体的权益,体现对整体诉讼利益的关注和维护。而证据提出命令是为解决特殊的证据问题而设立,在证据偏向存在于一方手中而导致双方当事人举证能力悬殊、诉讼地位不平衡的情况下,由法院以强制力介入,力求公正、高效、便捷的取证。相较之下,证据提出命令的实施目的更为具体且更具针对性,属于申请法院调查取证中避免当事人取证权落空的直接目的,更是实现平衡双方权益的间接目的之体现。

其次,从申请要件来看。当事人提出证据提出命令需满足一定的条件。比如,当事人在所提交的申请书中,首先需载明申请提交的证据名称或者内容,满足证据明确性要求;其次需要表明该证据证明的事实及事实的重要性,满足证据证明的必要性要求;最后需对对方当事人控制该书证的根据,即存在控制的事实及应当提交该证据的理由予以说明。由此可见,证据提出命令明确排除了摸索证明的申请方式,申请门槛较高。而申请法院调查取证则无具体的申请要件,当事人只要证明因客观原因无法自行收集证据,便可申请法院调查取证,申请门槛较低。故从申请要件的角度来看,两者满足特殊要件与一般要件的关系。

<sup>⑩</sup> 参见大连市甘井子区人民法院(2021)辽0211民初15821号民事判决书、西藏自治区拉萨市中级人民法院(2019)藏01民初26号民事判决书。

<sup>⑪</sup> 参见湖南省岳阳市中级人民法院(2015)岳中民一初字第11号民事判决书。



最后,从法律规定本身来看。《民诉法解释》虽细化了法院依申请调查收集证据的规定,但远不能满足实践中对该制度的适用需求。例如,如何判断当事人的申请是否有理由、法院决定调查取证应如何实施、违反法院调查收集证据的法律后果及制裁措施等问题,都没有明确的规定。<sup>②</sup>此外,《民诉法解释》第94条第3款规定,“当事人及其诉讼代理人因客观原因不能自行收集的其他证据,可以在举证期限届满前书面申请人民法院调查收集”。该规定本身就属于兜底性条款。而《民诉法解释》第112条中的“书证在对方当事人控制之下”,是否属于“因客观原因不能自行收集”证据之情形?本文的回答是肯定的。“控制在对方当事人手里的直接证据和主要证据”可作为“客观原因”之一的情形予以考虑。<sup>③</sup>因此,可以将当事人申请法院调查收集证据的规定理解为兜底条款,具有补充《民诉法解释》第112条取证不足的功能。从这个意义上来说,《民诉法解释》第112条属于第94条的特殊规定。

在明确了两者具有一般与特殊的关系后,实践中法院在审核取证申请时,按照特殊优于一般的适用规则,应当建立起以扩张后的证据提出命令为优先,申请法院调查取证为补充的申请取证模式。基于此,法院在审查当事人提出的取证申请时,应优先以证据提出命令的制度规范进行审查,若不符合该制度的运行标准,进而向具有补充地位的申请法院调查取证进行转化,确保法院能够查明案件事实,尽量减少因要件事实真伪不明导致的证明责任判决。此外,若法院对当事人的取证申请审查后,判断其不具备证据提出命令的特殊要件,则按照调查取证的申请处理。需要强调的是,随着调查取证的进行,若又出现符合证据提出命令特殊要件的情况,法院是否重新以证据提出命令为取证通道呢?本文认为,为避免取证程序的拖延或可能的程序空转,建议不再向证据提出命令转化。

### (三) 细化证据提出命令制度的具体规则

1. 证据提出命令的申请条件。《知产证据规定》第24条仅规定,法院对于当事人申请提交证据,理由成立的,应当裁定责令其提交。而对于具体的程序规则,未予规定。可以明确的是,由于证据提出命令是书证提出命令在证据范围的扩张,故该制度未尽规定的,可参照适用书证提出命令的相关条款。因此,对于证据提出命令的申请条件,可按照新《证据规定》第45条的规定条件提起,即申请人应在向法院提交的申请书中载明所申请提交的证据名称或内容、需要以该证据证明的事实及事实的重要性、对方当事人控制该证据的根据,以及应当提交该证据的理由等信息。<sup>④</sup>其中,第2款是关于法院如何判断被申请人是否掌握书证的问题,该规定要求法官依据法律、习惯等要素,结合案件证据所反映的事实作出综合判断。同时,《生态环境证据规定》第27条、第28条也有类似规定,不足之处在于两部法律均未对何为“综合判断”的标准作出说明。有学者提出,作为一项程序性事实,只需达到优势证据或称“盖然性占优”的证明程

<sup>②</sup> 参见毋爱斌:《当事人申请调查取证制度运行的异化与回归——基于S法院民商事司法实践的实证分析》,载《西南政法大学学报》2014年第4期。

<sup>③</sup> 参见最高人民法院民事审判第一庭:《最高人民法院新民事诉讼证据规定理解与适用》,人民法院出版社2020年版,第89页。

<sup>④</sup> 参见《最高人民法院关于民事诉讼证据的若干规定》(2019年修正)第45条。



度。<sup>⑤</sup> 具体而言,若经过听证,法官确信被申请人控制书证概率大于其不控制书证概率,即认定被申请人控制书证的概率大于50%,则应裁定提交书证。<sup>⑥</sup>

2. 对取证申请的审查及释明。在以证据提出命令为优先,申请法院调查取证为补充的制度设计下,法院在审查当事人提出的取证申请过程中需遵从一定的标准。本文认为,申请证据提出命令,必须首先满足向法院申请调查取证的一般要件,再看是否满足证据提出命令的特殊要件。若满足门槛较高的证据提出命令要件,法院则按照规定责令对方提交相关证据;如果仅满足一般要件,不满足特殊要件,可拒绝签发证据提出命令,同时向当事人释明,视为其向法院提出了申请法院调查取证,无须再重复申请。具体路径为:其一,若当事人提起证据提出命令申请,则参照新《证据规定》第46条对书证提出命令的相关要件进行程序和内容的审查,包括当事人提交的申请书所载是否符合立法上的形式要件及判断对方当事人是否确有证据提交义务的实质要件。据此,法院应就证据是否特定、是否具备证明利益、是否包含于法定的客体范围及是否处于对方当事人控制之下等内容作出综合的审查判断。<sup>⑦</sup> 若经审查,当事人申请的证据提出命令符合规定要件,应裁定责令对方提交相关证据;若不符合,则以驳回裁定书等书面形式告知申请人。同时,需向当事人释明法院将视其提出了申请法院调查取证的请求,对该取证申请进行兜底性审查。其二,若当事人提起法院调查取证申请,基于同样道理,法院亦应释明当事人优先按照证据提出命令的要件提交申请材料,审查后若符合标准,则裁定签发证据提出命令予以取证。法院之所以可以依职权对当事人的申请释明后予以转化,原因在于转换后取证是法院依据专业判断作出的最有利于达到取证目的的方式,通常与当事人目标一致,当事人对于实际采取哪种通道予以取证,或许不以为然。且释明的目的也有通知当事人之意,若其提出异议,及时提出即可。因此,严格来说,对当事人取证申请的释明,不仅符合制度利用者的最大利益,而且有助于节约司法资源,减少诉累,省略了重新提交申请的环节。另外,对于该处“释明”之意,不应忽略其原意,仍应包含必要时释明当事人进行程序或申请材料的指导说明等内容,从而通过法院的释明提高当事人收集证据的效率。需要强调的是,释明内容的范围需以当事人已经掌握或陈述的线索事实为限。比如,模糊主张的须予以明确,不充分的举证须予以加强。

另外,在证据保全和证据提出命令竞合适用的情况下,需法院综合考虑案件的整体情况,如遇到侵权人随时可能损毁财务账册、电子数据等关键性证据材料,致使证据以后难以取得,取证具有紧急性等特殊情况,鉴于证据保全可以第一时间固定和提取,防止当事人损毁和隐匿证据,则可在当事人提出证据命令申请时,释明在符合证据保全制度要件的情况下,第一时间通过证据保全来固定收集证据。

3. 证据提出命令的法律效果。人民法院签发证据提出命令后,如证据持有人违背法院责

<sup>⑤</sup> 参见霍海红:《提高民事诉讼证明标准的理论反思》,载《中国法学》2016年第2期。

<sup>⑥</sup> 在司法实践中,部分地区高级人民法院裁判文书亦持有相似观点。参见四川省高级人民法院(2018)川申5208号民事再审裁定书、广东省高级人民法院(2017)粤民申7468号民事裁定书等。

<sup>⑦</sup> 参见最高人民法院民事审判第一庭:《最高人民法院新民事诉讼证据规定理解与适用》,人民法院出版社2020年版,第443页。



令其提交证据的义务,可参照新《证据规定》第48条违反书证提出命令的法律后果处理,即第1款中针对当事人无正当理由拒不提交的行为,人民法院可以认定对方当事人所主张的书证内容为真实。第2款中增设对恶意毁损证据的行为,以妨碍对方当事人使用为目的,毁灭有关书证或者实施其他致使书证不能使用行为的,人民法院可直接认定对方当事人主张以该书证证明的事实为真实。<sup>③</sup>《民诉法解释》第112条第2款亦保留该规定。由此可见,立法中对于证据持有人不遵守提交证据义务的行为课以较为严苛的法律后果,体现了立法者对以妨害当事人获取证据为动机的行为加大了惩戒力度,确保法院尽快发现事实真相。值得注意的是,证据提出命令的义务主体向第三人扩张后,对第三人签发的证据提出命令,与对当事人签发的在法律效果上应有所区别。立法上对案外第三人拒绝履行证据提出义务的行为当然无法通过证明妨碍或类似规则处理,而只能采用罚款或拘留等强制措施予以惩戒。此外,现行立法的不足之处还在于,无论法院裁定签发抑或不予签发证据提出命令,我国都未规定相应的救济措施。本文认为,若法院裁定不予签发,需按照程序规定,向申请人出具书面形式的裁定结果,供其在必要时提出异议。此外,对于对方当事人或案外第三人因证据提出命令的实施造成权益减损的,也应赋予其异议、复议等相应的救济手段。

在依申请调查取证的情况下,对于证据持有人违反调查取证的法律后果,立法上未予以规定。对此,可借鉴违反证据提出命令的法律后果进行制裁,将被申请的义务主体分情况规定,若持证主体为当事人,可借鉴新《证据规定》第95条关于举证妨碍的相关规定,推定申请证据所要主张的事实为真实;若为案外第三人,则可通过罚款或拘留等方式予以惩戒,并向其所在单位管理部门发出司法建议。<sup>④</sup>此外,对于保障当事人申请调查取证权的救济问题,仅在旧《证据规定》第19条提出过,赋予当事人及其诉讼代理人以“通知书”为对象进行复议的权利。<sup>⑤</sup>但在实践中,仅有极少数申请调查取证的案件法院制作并送达书面形式的“通知书”,导致当事人无法知晓其申请是否被批准、是否已调取,以及不予准许调查取证的原因,更未告知申请人有申请复议的权利。立法上应完善对该制度的规定,对不予调查取证的结果以书面方式通知,且以无强制力的“通知书”方式作为书面审查结果,显然不够权威。本文认为,法院作出是否同意进行调查取证的决定属于程序性事项,宜以具有法律效力的“裁定书”形式作为审查结果。当然,值得肯定的是,《民事诉讼法》第211条中,将对于当事人提起调查取证的申请,法院应当予以调查收集却未进行收集的情况作为申请再审的一项法定事由加以规定,足以见立法者逐渐重视对当事人申请调查取证的权利救济问题。

## 五、结语

我国立法课以当事人举证责任的同时赋予当事人取证权,且规定了法院调查取证权。当事人主义诉讼模式和法院案多人少的积案压力,使得当事人无法依赖法院主动调查取证,因此,进一步夯实当事人申请取证制度,是当前的不二选择。我国现行法虽赋予当事人多种申请

<sup>③</sup> 参见《最高人民法院关于民事诉讼证据的若干规定》(2019年修正)第48条。

<sup>④</sup> 参见毋爱斌:《当事人申请调查取证制度运行的异化与回归——基于S法院民商事司法实践的实证分析》,载《西南政法大学学报》2014年第4期。

<sup>⑤</sup> 参见《最高人民法院关于民事诉讼证据的若干规定》(2001年)第19条。



取证的选择,但并未规定制度间的相互关系,导致实际适用中相互竞争和挤压、功能不张的局面。证据提出命令是建立在书证提出命令之上的,扩张其证据范围至物证的取证制度,能充分发挥其设计初衷的价值。扩张适用至第三人的证据提出命令,亦能吸收实践中自发生成的证据调查令功能,成为覆盖我国其他申请取证制度的核心制度。同时,申请法院调查取证作为申请取证体系的兜底性条款,亦具有补强当事人有效取证的作用。因此,应构建起以扩张至第三人的证据提出命令为优先适用,申请法院调查取证为补充的体系性框架,以解决多种取证手段竞合混乱的问题。在实际操作过程中,当事人提出证据提出命令,首先需满足向法院申请调查取证的一般要件,再看是否满足证据提出命令的特殊要件。若满足门槛较高的特殊要件,法院则责令对方提交相关证据;如果仅满足一般要件,法院可拒绝签发证据提出命令。在此过程中,应充分发挥法院的释明义务,向当事人释明法院视其提出了申请调查取证的请求,无须重复申请,减少诉累。以该体系性申请取证制度的框架为模式,可通过当事人的一次性申请,以及法院的一次性审查和释明,实质性解决当事人多种取证手段间“叠床架屋”的问题,从而避免当事人取证权的落空,实现高效取证之目的。

## The Systematic Construction of The Parties' Application for Evidence Collection System

Xiao Jianguo Shang Dun

**Abstract:** In modern litigation cases, the problem of evidence is increasingly prominent, and the parties with the burden of proof often face the problem that they cannot effectively obtain evidence, leading to the adverse consequences of litigation. In response to the needs of practice, the parties have a variety of channels to apply for evidence collection in civil litigation in China, but the system for evidence application reflects the fragmentation of “independent governance”, which the system cannot be applied, but mutual independence and isolation, reducing the practical value of the application evidence system; the competition and squeeze of the function of the application evidence system, which is far from the system's goal of alleviating the difficulty of obtaining evidence. The evidence order has the advantage of legislation and efficiency, expanding its applicable subject to the third party, which can absorb the function of evidence investigation order and further become a comprehensive civil evidence collection system. In addition, the application for the court investigation and evidence collection design, so as to build a civil litigation application evidence collection system with the expansion of evidence as the priority and the court investigation and evidence collection as the supplement.

**Keywords:** civil litigation; apply for evidence; the evidence order; apply for court investigation and evidence collection

(责任编辑:杨志航)



# **Exhibit B-17**

1

## Understanding and Application of Article 70 of the Civil Procedure Law of the People's Republic of China (2023 Amendment)

[illegible][illegible]

1. 本行在 2019 年 12 月 31 日及 2020 年 6 月 30 日，均无因与关联方发生交易所产生的或有负债。  
 2. 本行在 2019 年 12 月 31 日及 2020 年 6 月 30 日，均无因担保、抵押、质押等产生的或有负债。  
 3. 本行在 2019 年 12 月 31 日及 2020 年 6 月 30 日，均无因其他事项产生的或有负债。  
 4. 本行在 2019 年 12 月 31 日及 2020 年 6 月 30 日，均无因其他事项产生的或有负债。  
 5. 本行在 2019 年 12 月 31 日及 2020 年 6 月 30 日，均无因其他事项产生的或有负债。  
 6. 本行在 2019 年 12 月 31 日及 2020 年 6 月 30 日，均无因其他事项产生的或有负债。  
 7. 本行在 2019 年 12 月 31 日及 2020 年 6 月 30 日，均无因其他事项产生的或有负债。  
 8. 本行在 2019 年 12 月 31 日及 2020 年 6 月 30 日，均无因其他事项产生的或有负债。  
 9. 本行在 2019 年 12 月 31 日及 2020 年 6 月 30 日，均无因其他事项产生的或有负债。  
 10. 本行在 2019 年 12 月 31 日及 2020 年 6 月 30 日，均无因其他事项产生的或有负债。

## 中华人民共和国民事诉讼法（2023 年修正）第七十条 释义

### 正文

第七十条 人民法院有权向有关单位和个人调查取证，有关单位和个人不得拒绝。

人民法院对有关单位和个人提出的证明文书，应当辨别真伪，审查确定其效力。

### 【条文主旨】

本条是关于人民法院调查取证的职权以及对文书的审查义务的规定。

### 【条文理解】

人民法院要正确处理民事纠纷，必须运用证据查明案件的事实，审判人员只有掌握了充分的证据，才能在事实清楚的基础上适用法律，对民事案件作出正确的处理。《民事诉讼法》第 67 条第 2 款规定：当事人及其诉讼代理人因客观原因不能自行收集的证据，或者人民法院认为审理案件需要的证据，人民法院应当调查收集。可见，在上述情形中，人民法院需要向有关单位和个人调取证据。

本条第 1 款规定，人民法院有权向有关单位和个人调查取证，有关单位和个人不得拒绝。一方面，调取证据是人民法院行使审判权所进行的重要活动，是法律赋予的职权；另一方面，对于单位和个人来说，提供证据则是其应尽的法律义务。因此，人民法院依法调取证据时，任何单位和个人都有义务协助。如果有关单位或个人拒绝或者妨害调查取证，人民法院可以根据《民事诉讼法》第 114 条和第 117 条的规定，对其采取妨害民事诉讼的强制措施。在调取证据后，依据本

条第2款规定，人民法院对有关单位和个人提出的证明文书，应依法进行审查，鉴别真伪，并确定其证明效力。

值得注意的是，在收集、审查证据的表述上，传统大陆法系一般按照主体立场的不同区分“证据收集”和“证据调查”两个概念，当事人自行收集证据称为“证据收集”；法院收集、调查证据则称为“证据调查”。大陆法系中的“证据调查”在行为意义上包括两个方面：一是收集证据的行为；二是审查、获悉证据资料的行为。<sup>[1]</sup>我国《民事诉讼法》并没有采用“证据收集”“证据调查”的表述，而是采用“提供证据”“调查取证”以及“审查核实”“审查”等表述方式，对当事人与法院在证据收集和调查领域的权限和义务进行划分。本条规定的即为法院调查取证的职权以及对文书的审查义务。调查取证这一行为的侧重点在于对证据的发现、提取和固定上，是指在行为意义上对案件事实进行调查，收集、获取能够证明案件真实情况的证据材料，并不包含审查获取证据资料的内容。而审查确定文书的效力在于对当事人提交的文书进行审视、查验，从而确定该证据的真实性、关联性、合法性及其证明力。

#### 【条文适用】

1. 国家机关、社会团体、企事业单位等职能部门提交的证明文书，属于公文书证，一般具有较高的证明力，但立法并没有赋予该类证据材料绝对的效力。《民事诉讼法司法解释》第114条规定：国家机关或者其他依法具有社会管理职能的组织，在其职权范围内制作的文书所记载的事项推定为真实，但有相反证据足以推翻的除外。必要时，人民法院可以要求制作文书的机关或者组织对文书的真实性予以说明。这是因为，公文书证也可能因为工作人员的失误或个人利益，出现与事实不符的情形。所以，人民法院仍然应当进行审查，确认其真实性。

2. 适用本条时应当结合《民事诉讼法司法解释》《民事诉讼证据规定》等相关司法解释的规定注意以下几点：

第一,《民事诉讼法司法解释》第97条规定:“人民法院调查收集证据,应当由两人以上共同进行。调查材料要由调查人、被调查人、记录人签名、捺印或者盖章。”值得注意的是,法院调查收集证据需要履行法定的程序,应由两人以上共同进行,否则为无效取证。这里的“人”,当然包括审判人员、书记员,在法院参与审判活动的陪审员也应包括在内。审判人员收集调查证据必须是共同进行,不得单独进行。在实践中,有的法院人手紧张,在调查取证时,去了两个审判人员,但各自进行不同的调查,只是在笔录上记两个人的名字。这是不合法的,应当纠正这一做法。

第二,人民法院直接调查收集的证据范围一般应限于两种情形:一是当事人因客观原因不能提供的证据,包括由国家有关部门保存,当事人及其诉讼代理人无权调取的和涉及国家秘密、商业秘密、个人隐私的等。二是当事人未要求收集但人民法院应当依职权调取的证据,包括涉及可能损害国家利益、社会公共利益的;涉及身份关系的;有关公益诉讼的;当事人可能恶意串通损害他人合法权益的;涉及程序性事项的。对于不属于上述情形,但需要对有关证据进行核实的,人民法院可向有关单位和个人核实

第三,针对不同的证据类型,调查人员应当遵循不同的程序规定:(1)人民法院调查收集的书证,可以是原件,也可以是经核对无误的副本或者复制件。书证是副本或者复制件的,应当在调查笔录中说明来源和取证情况。(2)人民法院调查收集的物证应当是原物。被调查人提供原物确有困难的,可以提供复制品或者影像资料。提供复制品或者影像资料的,应当在调查笔录中说明取证情况。(3)人民法院调查收集计算机数据或者录音、录像等视听资料的,应当要求被调查人提供有关资料的原始载体。被调查人提供原始载体确有困难的,可以提供复制件。人民法院应当在调查笔录中说明其来源和制作经过。(4)人民法院调查收集可能需要鉴定的证据,应当遵守相关技术规范,确保证据不被污染。

第四，摘录有关单位制作的与案件事实相关的文件、材料，应当注明出处，并加盖制作单位或者保管单位的印章，摘录人和其他调查人员应当在摘录件上签名或者盖章。摘录文件、材料应当保持内容相应的完整性，不得断章取义。



# **Exhibit B-18**

**Notice by the All-China Lawyers' Association of Issuance of the Rules for the Handling of Criminal Cases by Lawyers**

Document Number: No. 51 [2017] of the All-China Lawyers' Association  
Area of Law: Lawyer General Provisions and Institutions  
Level of Authority: Industry Regulations  
Issuing Authority: All-China Lawyer's Association  
Date Issued: 09-20-2017  
Effective Date: 08-27-2017  
Status: Effective  
Topic: Admission of Guilt and Acceptance of Punishment Operating Guidelines for Lawyer's Legal Service

Notice by the All-China Lawyers' Association of Issuance of  
the Rules for the Handling of Criminal Cases by Lawyers

中华全国律师协会关于印发《律师办理刑事案件规范》的通知

(No. 51 [2017] of the All-China Lawyers' Association)

（律发通〔2017〕51号）

The lawyers' associations of all provinces, autonomous  
regions and municipalities directly under the Central  
Government; and the Lawyers Association of the Xinjiang  
Production and Construction Corps:

各省、自治区、直辖市律师协会，新疆生产建设兵团律师协会：

The Rules for the Handling of Criminal Cases by Lawyers,  
as deliberated and adopted at the 8th Session of the Ninth  
Executive Council of the All-China Lawyers' Association on  
August 27, 2017, are hereby issued for your conscientious  
implementation.

《律师办理刑事案件规范》已由第九届全国律协常务理事会第八次会议于2017年8月27日审议通过。现印发你们，请认真执行。

All-China Lawyers' Association

中华全国律师协会

September 20, 2017

2017年 9月20日

Rules for the Handling of Criminal Cases by Lawyers

律师办理刑事案件规范

(Deliberated and adopted at the 8th Session of the Ninth Executive Council of the All-China Lawyers' Association on August 27, 2017)

(2017年8月27日第九届全国律协常务理事会第八次会议审议通过)

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Section 1 General Principles	第一节 一般原则



**Article 1** For the purposes of guaranteeing and directing lawyers' lawful performance of duties in their participation in criminal proceedings and regulating the handling of criminal cases by lawyers, these Rules are developed in accordance with the Criminal Procedure Law of the People's Republic of China ("Criminal Procedure Law"), the Lawyers Law of the People's Republic of China ("Lawyers Law"), and relevant laws, judicial interpretations and departmental rules, and in consideration of the practical experience in the handling of criminal cases by lawyers.

**Article 2** Lawyers participating in criminal proceedings shall adhere to the principles of protecting the lawful rights and interests of litigants, ensuring the correct implementation of laws, and maintaining social fairness and justice, be loyal to their duties, and be diligent.

**Article 3** Lawyers participating in criminal proceedings shall perform the defense and representation functions according to the law, and their personal rights and practicing rights may not be infringed upon.

The defense or representation opinions presented in court by a lawyer participating in criminal proceedings may not be subject to legal prosecution, however, except speeches compromising the national security, maliciously defaming others or seriously disrupting the court order.

**Article 4** When participating in criminal proceedings, a lawyer shall observe the laws and regulations, and adhere to the professional ethics and practicing discipline of lawyers.

**第一条** 为保障和指导律师在参与刑事诉讼活动时依法履行职责，规范律师办理刑事案件行为，根据《中华人民共和国刑事诉讼法》（以下简称《刑事诉讼法》）、《中华人民共和国律师法》（以下简称《律师法》）和相关法律、司法解释、部门规章，结合律师办理刑事案件的实践经验，制定本规范。

**第二条** 律师参与刑事诉讼应当坚持维护当事人的合法权益、维护法律的正确实施、维护社会公平和正义的原则，忠于职守，认真负责。

**第三条** 律师参与刑事诉讼依法履行辩护与代理职责，人身权利和执业权利不受侵犯。

律师参与刑事诉讼在法庭上发表的辩护、代理意见不受法律追究。但是，发表危害国家安全、恶意诽谤他人、严重扰乱法庭秩序的言论除外。

**第四条** 律师参与刑事诉讼，应当遵守法律、法规，恪守律师职业道德和执业纪律。



**Article 5** A lawyer serving as a defender shall

independently perform his or her defense duties according to the law.

第五条 律师担任辩护人，应当依法独立履行辩护职责。

The responsibility of a lawyer is to present materials and opinions proving that a criminal suspect or defendant is innocent or is less guilty than charged or his or her criminal liability should be mitigated or relieved, on the basis of fact and law, so as to protect the procedural rights and other lawful rights and interests of the criminal suspect or defendant.

辩护人的责任是根据事实和法律，提出犯罪嫌疑人、被告人无罪、罪轻或者减轻、免除其刑事责任的材料和意见，维护犯罪嫌疑人、被告人的诉讼权利和其他合法权益。

In defense activities, a lawyer shall respect the opinions of the litigants on the basis of law and fact, carry out work according to the principle of being conducive to the litigants, and may not present any defense opinions inconducive to the litigants and contrary to the free will of the litigants.

律师在辩护活动中，应当在法律和事实的基础上尊重当事人意见，按照有利于当事人的原则开展工作，不得违背当事人的意愿提出不利于当事人的辩护意见。

**Article 6** A defense lawyer shall have the privilege to

keep confidential the relevant information on his or her client known in the practicing of law from any entity and individual, however, except the facts and information on a crime compromising national security or public security or seriously endangering the personal safety of others, which a client or other person prepares to commit or is committing.

第六条 辩护律师对在执业活动中知悉的委托人的有关情况和信息，对任何单位和个人有权予以保密。但是，委托人或者其他准备或者正在实施危害国家安全、公共安全以及严重危害他人人身安全的犯罪事实和信息除外。

**Article 7** A lawyer participating in criminal proceedings may not help a criminal suspect or defendant conceal, destroy, or forge evidence or make a false confession in collusion, intimidate or induce a witness into committing perjury, or otherwise interfere with the legal proceedings of the judicial authorities.

Where a case handling authority holds a lawyer criminally liable in violation of the relevant provisions of the Criminal Procedure Law, a lawyer shall have the right to file a petition and accusation with the relevant authority according to the law.

## Section 2 Case Acceptance and Case Closing

**Article 8** A lawyer participating in criminal proceedings may provide the following services:

(1) He or she may accept representation of a criminal suspect or defendant to serve as the defender. Where a close relative, another relative or friend, or employer of a criminal suspect or defendant retains a defender on behalf the criminal suspect or defendant, it shall be confirmed by the criminal suspect or defendant.

(2) He or she may accept representation of a guardian or close relative of a minor or mental patient that is suspected of committing a crime to serve as the defender.

**第七条** 律师参与刑事诉讼活动，不得帮助犯罪嫌疑人、被告人隐匿、毁灭、伪造证据或者串供，不得威胁、引诱证人作伪证以及进行其他干扰司法机关诉讼活动的行为。

办案机关违反《刑事诉讼法》的有关规定追究律师刑事责任的，律师有权依法向有关机关申诉、控告。

## 第二节 收案和结案

**第八条** 律师参与刑事诉讼，可以从事下列业务：

（一）接受犯罪嫌疑人、被告人的委托，担任辩护人。犯罪嫌疑人、被告人的近亲属、其他亲友或其所在单位代为委托的，须经犯罪嫌疑人、被告人确认；

（二）接受涉嫌犯罪的未成年人或精神病人的监护人、近亲属的委托，担任辩护人；

(3) He or she may accept representation of a victim in a cases of private prosecution, its statutory agent or close relative, accept representation of a private prosecutor in a public prosecution case or its statutory agent, and accept representation of a litigant in a civil action incidental to criminal proceeding or its statutory agent, to serve as the litigation representative.

(4) He or she may accept representation of a litigant in a criminal case, its statutory agent or close relative, and accept representation of a party who is not a party to a case and who has been ruled by a judgment or ruling to have infringed upon the lawful rights and interests, to serve as the lawyer in a petition case.

(5) He or she may accept representation of a person who is not prosecuted, its statutory agent or close relative, to file a petition and accusation on its behalf.

(6) After the public security organ or the people's procuratorate makes a decision of not opening a case, dismissing a case or not initiating a prosecution, he or she may accept representation of a victim, its statutory agent or close relative, to apply for reconsideration or initiate a prosecution on a commissioned basis.

(7) During the procedures for confiscation of illegal proceeds, he or she may accept representation of a criminal suspect, defendant, or its close relative or another interested party, to serve as the litigation representative.

(三) 接受公诉案件的被害人、其法定代理人或者近亲属的委托，接受自诉案件的自诉人、其法定代理人的委托，接受刑事附带民事诉讼的当事人、其法定代理人的委托，担任诉讼代理人；

(四) 接受刑事案件当事人、其法定代理人、近亲属的委托，接受被刑事判决或裁定侵犯合法权益的案外人的委托，担任申诉案件的代理人；

(五) 接受被不起诉人、其法定代理人、近亲属的委托，代为申诉、控告；

(六) 在公安机关、人民检察院作出不立案或撤销案件或不起诉的决定后，接受被害人、其法定代理人、近亲属的委托，代为申请复议或起诉；

(七) 在违法所得没收程序中，接受犯罪嫌疑人、被告人、其近亲属或其他利害关系人的委托，担任诉讼代理人；



(8) During the procedures for compulsory medical treatment, he or she may accept representation of a respondent or defendant, to serve as the litigation representative; and during the procedures of reconsideration, he or she may accept representation of a person subject to compulsory medical treatment, a victim, its statutory agent or close relative, to serve as the litigation representative.

(八) 在强制医疗程序中, 接受被申请人或被告人的委托, 担任诉讼代理人; 在复议程序中, 接受被决定强制医疗的人、被害人、其法定代理人、近亲属的委托, 担任诉讼代理人;

(9) Other relevant services in criminal proceedings.

(九) 其他刑事诉讼活动中的相关业务。

**Article 9** Where a lawyer accepts representation, the law firm shall undergo the following formalities:

**第九条** 律师接受委托, 应当由律师事务所办理以下手续:

(1) The law firm shall enter into a Retainer Agreement with the client.

(一) 律师事务所与委托人签署《委托协议》;

(2) The client shall sign a power of attorney.

(二) 委托人签署委托书;

(3) The law firm shall issue the relevant litigation documents required for handling a case.

(三) 律师事务所开具办案所需的相关诉讼文书。

For the aforesaid formalities, the law firm shall keep the original documents or copies for future reference.

上述手续, 律师事务所应当留存原件或存根备查。

**Article 10** Where a lawyer accepts representation to handle a criminal case, the law firm may undergo the formalities of representation respectively at the criminal investigation, examination for prosecution, trial of first instance, trial on appeal, death penalty review, petition, retrial and other litigation phases, or undergo the formalities at one time.

**第十条** 律师接受委托办理刑事案件, 可以在侦查、审查起诉、一审、二审、死刑复核、申诉、再审等各诉讼阶段由律师事务所分别办理委托手续, 也可以一次性办理。

**Article 11** After accepting representation or

designation, a lawyer shall contact the case handling authority in a timely manner, produce the lawyer's practicing certificate, and submit the power of attorney and the certificate issued by the law firm, or an official legal aid document

第十一条 律师接受委托或者指派后，应当及时与办案机关联系，出示律师执业证书，提交委托书和律师事务所证明或者法律援助公函。

**Article 12** A lawyer handling a criminal case may not refuse to defend or represent any client without justified reason. However, if the authorized matter violates the law, the client makes use of the services provided by the lawyer to engage in illegal activities or deliberately conceals a material fact related to the case, the lawyer may refuse to defend or represent the client.

第十二条 律师办理刑事案件，无正当理由，不得拒绝辩护或者代理。但委托事项违法、委托人利用律师提供的服务从事违法活动，或者委托人故意隐瞒与案件有关的重要事实的，律师有权拒绝辩护或者代理。

A lawyer that strongly disagrees with the litigant or the client on the defense or representation plan and cannot reach an agreement may terminate the representation relationship with the client on behalf of the law firm.

律师与当事人或者委托人就辩护或代理方案产生严重分歧，不能达成一致的，可以代表律师事务所与委托人协商解除委托关系。

After the termination of the representation relationship, the lawyer shall notify the case handling authority in a timely manner.

解除委托关系后，律师应当及时告知办案机关。

**Article 13** A same lawyer may not defend two or more criminal suspects or defendants in the same case, nor defend two or more criminal suspects or defendants who are not handled in the same case but whose crimes suspected are associated,

第十三条 同一名律师不得为两名或两名以上的同案犯罪嫌疑人、被告人辩护，不得为两名或两名以上的未同案处理但涉嫌的犯罪存在关联的犯罪嫌疑人、被告人辩护。

A same law firm that accepts representation of two or more criminal suspects or defendants in a same case and respectively designates different lawyers as defenders shall notify the clients and obtain the consent of the clients.

同一律师事务所在接受两名或两名以上的同案犯罪嫌疑人、被告人的委托，分别指派不同的律师担任辩护人的，须告知委托人并经其同意。

**Article 14** A lawyer handling a criminal case may, jointly with a lawyer in another place, assist in the investigation, collection of evidence and meeting, and may, with consent of the litigant, undergo formalities of authorization for the assisting lawyer.

第十四条 律师办理刑事案件，可以会同异地律师协助调查、收集证据和会见，经当事人同意可以为协同工作的律师办理授权委托手续。

Where a litigant changes the lawyer in investigation, examination for prosecution, original trial, trial on appeal, death penalty review, petition or retrial case, the lawyer before the change may provide convenience in case introduction, case file materials and evidentiary materials for the lawyer after the change.

在侦查、审查起诉、一审、二审、死刑复核、申诉、再审案件中，当事人变更律师的，变更前的律师可以为变更后的律师提供案情介绍、案卷材料、证据材料等工作便利。

**Article 15** A defense lawyer may take an assistant lawyer to assist in the meeting, take the assistant lawyer to assist in the consultation of the case files as required for case handling, and apply to the people's court for taking the assistant lawyer to participate in the court session.

第十五条 辩护律师可以携一名律师助理协助会见，可以根据办案需要携律师助理协助阅卷，向人民法院申请携律师助理参加庭审。

**Article 16** After a criminal case handled by a lawyer is closed, the lawyer shall prepare a summary of case handling which shall be archived with the defense statements or representation statements, process and case file materials excerpted and copied, among others.

第十六条 律师办理刑事案件结案后，应当撰写办案总结，与辩护词或代理词、法律文书以及摘抄、复制的案卷材料等一并归档保存。



**Article 17** Where the representation relationship is terminated in advance, a lawyer shall state the reasons in the summary of case handling, annex the relevant formalities, and review case files for archiving.

第十七条 提前解除委托关系的，律师应当在办案总结中说明原因，并附相关手续，整理案卷归档。

### Section 3 Meeting and Correspondence

### 第三节 会见和通信

**Article 18** To meet a criminal suspect or defendant in custody, the lawyer shall produce the lawyer's practicing certificate, power of attorney and certificate issued by the law firm or official legal aid document to the jail.

第十八条 辩护律师会见在押犯罪嫌疑人、被告人，应当向看守所出示律师执业证书、委托书和律师事务所证明或者法律援助公函。

A defense lawyer may meet criminal suspects and defendants under residential confinement and on bail pending trial.

辩护律师可以会见被监视居住和取保候审的犯罪嫌疑人、被告人。

An assistant lawyer attending a meeting in accompany with a defense lawyer shall produce the certificate issued by the law firm and the lawyer's practicing certificate or the intern certificate of the person applying for the practice of law.

律师助理随同辩护律师参加会见的，应当出示律师事务所证明和律师执业证书或申请律师执业人员实习证。

**Article 19** Where a defense lawyer handles a criminal case endangering national security, a criminal case of terrorist activities, or an extraordinarily significant bribery case and the criminal suspect is in custody or under residential confinement, the defense lawyer shall file an application with the investigation authority for meeting in the investigation phase, and if necessary, the application shall be filed in writing. Where the investigation authority does not allow meeting, the defense lawyer may request the investigation authority to issue a written decision and state the reasons.

第十九条 辩护律师办理危害国家安全犯罪、恐怖活动犯罪、特别重大的贿赂犯罪案件，犯罪嫌疑人在押或者被监视居住的，在侦查阶段会见时应当向侦查机关提出申请，必要时应当采用书面形式申请。侦查机关不许会见的，辩护律师可以要求其出具书面决定，并说明理由。

**Article 20** A defense lawyer that needs an interpreter to assist in meeting the criminal suspect or defendant may take an interpreter permitted by the case handling authority to attend the meeting. The interpreter shall, upon strength of the written permission decision of the case handling authority and his or her identification, attend meeting in accompany with the defense lawyer.

第二十条 辩护律师会见犯罪嫌疑人、被告人需要翻译人员协助的，可以携经办案机关许可的翻译人员参加会见。翻译人员应当持办案机关许可决定文书和本人身份证明，随同辩护律师参加会见。

**Article 21** When meeting a criminal suspect or defendant, a defense lawyer shall prepare for a meeting outline in advance, carefully listen to the statements and defense of the criminal suspect or defendant, and find out and verify the contradictions and doubts in the case facts and evidence.

第二十一条 辩护律师会见犯罪嫌疑人、被告人时，应当事先准备会见提纲，认真听取犯罪嫌疑人、被告人的陈述和辩解，发现、核实案件事实和证据材料中的矛盾和疑点。

**Article 22** When meeting a criminal suspect or defendant, a defense lawyer shall focus on the following information:

第二十二条 辩护律师会见犯罪嫌疑人、被告人时应当重点向其了解下列情况：

(1) The personal information and other basic information on the criminal suspect or defendant.

（一）犯罪嫌疑人、被告人的个人信息等基本情况；

(2) Whether the criminal suspect or defendant has committed or participated in the alleged crime.

（二）犯罪嫌疑人、被告人是否实施或参与所涉嫌的犯罪；

(3) Whether the criminal suspect or defendant has any objection to the facts investigated and the crime charged by the investigation authority, and whether the criminal suspect or defendant has any objection to the suspected or charged facts and crime as determined in the written prosecution opinion and indictment.

（三）犯罪嫌疑人、被告人对侦查机关侦查的事实和罪名是否有异议，对起诉意见书、起诉书认定其涉嫌或指控的事实和罪名是否有异议；

(4) Defense on innocence of the criminal suspect or defendant or the pettiness of a crime.

（四）犯罪嫌疑人、被告人无罪、罪轻的辩解；

(5) Whether the criminal suspect or defendant has voluntary surrender, meritorious act, returning illicit property, compensation and other sentencing circumstances for lighter punishment, mitigated punishment, and exemption of punishment.

（五）犯罪嫌疑人、被告人有无自首、立功、退赃、赔偿等从轻、减轻或免于处罚的量刑情节；

(6) Whether the criminal suspect or defendant has preparation, discontinuance, or abortion of a crime, or any other criminal form.

（六）犯罪嫌疑人、被告人有无犯罪预备、犯罪中止、犯罪未遂等犯罪形态；

(7) Whether docketing and jurisdiction comply with the provisions of the law.

（七）立案、管辖是否符合法律规定；

(8) Whether the legal formalities for taking compulsory measures are complete and the procedures are lawful.

（八）采取强制措施的法律手续是否完备、程序是否合法；

(9) Whether there is any extortion of confession by torture or other circumstance of illegal evidence collection or other circumstance infringing upon personal rights or procedural rights.

（九）是否存在刑讯逼供等非法取证的情况，以及其他侵犯人身权利和诉讼权利的情况；

(10) The information that the property of the criminal suspect or defendant and its relatives is seized, detained or frozen.

（十）犯罪嫌疑人、被告人及其亲属的财物被查封、扣押、冻结的情况；

(11) Whether the confession and defense collected by the investigation authority are consistent with the statements made in meeting between the lawyer and the criminal suspect, whether there is any change and the reasons for the change.

（十一）侦查机关收集的供述和辩解与律师会见时的陈述是否一致，有无反复以及出现反复的原因；



(12) Other information on the case required to be understood.

(十二) 其他需要了解的与案件有关的情况。

**Article 23** When meeting a criminal suspect or defendant, a defense lawyer shall introduce the criminal proceeding procedures to the criminal suspect or defendant; notify the criminal suspect or defendant of the rights and obligations in the criminal proceeding procedures; and notify the criminal suspect or defendant of the methods of exercising rights and the possible consequences for waive of rights and violation of statutory obligations.

**第二十三条** 辩护律师会见时应当向犯罪嫌疑人、被告人介绍刑事诉讼程序；告知其在刑事诉讼程序中的权利、义务；告知犯罪嫌疑人、被告人权利行使方式及放弃权利和违反法定义务可能产生的后果。

**Article 24** When meeting a criminal suspect or defendant, a defense lawyer shall communicate with the criminal suspect or defendant on the defense plan and defense opinions at the corresponding phases.

**第二十四条** 辩护律师会见时应当与犯罪嫌疑人、被告人就相应阶段的辩护方案、辩护意见进行沟通。

**Article 25** From the date when a case is transferred for examination for prosecution, a defense lawyer may verify the relevant evidence with the criminal suspect or defendant.

**第二十五条** 自案件移送审查起诉之日起，辩护律师可以向犯罪嫌疑人、被告人核实有关证据。

**Article 26** When meeting a criminal suspect or defendant in custody, a defense lawyer shall comply with the relevant provisions issued by the jail according to the law. Without permission, a defense lawyer may not directly transmit any drug, property, food, or any other item to the criminal suspect or defendant, provide any communication tool for the criminal suspect or defendant, or take any relative or friend of a criminal suspect or defendant to meet the criminal suspect or defendant.

**第二十六条** 辩护律师会见在押犯罪嫌疑人、被告人应当遵守看守所依法作出的有关规定。未经允许，不得直接向犯罪嫌疑人、被告人传递药品、财物、食物等物品，不得将通讯工具提供给犯罪嫌疑人、被告人使用，不得携犯罪嫌疑人、被告人亲友会见。

A defense lawyer may accept the written materials concerning defense submitted by a criminal suspect or defendant, and may also provide written materials concerning defense for a criminal suspect or defendant.

辩护律师可以接受犯罪嫌疑人、被告人提交的与辩护有关的书面材料，也可以向犯罪嫌疑人、被告人提供与辩护有关的文件与材料。

**Article 27** A defense lawyer shall, after the end of meeting, notify the supervisor of the jail or the supervisor of implementing residential surveillance in a timely manner.

第二十七条 辩护律师会见结束后应当及时告知看守所的监管人员或执行监视居住的监管人员。

**Article 28** A transcript of meeting prepared by a defense lawyer when meeting a criminal suspect or defendant shall be signed by the criminal suspect or defendant.

第二十八条 辩护律师会见犯罪嫌疑人、被告人制作会见笔录的，应当交其签字确认。

**Article 29** A defense lawyer may, according to the circumstances of a case, rationally determine the time and times of meeting a criminal suspect or defendant.

第二十九条 辩护律师可以根据案件情况，合理确定会见犯罪嫌疑人、被告人的时间、次数。

**Article 30** A defense lawyer may, according to the needs of handling a case, communicate with the criminal suspect or defendant in custody. The correspondence between a defense lawyer and a criminal suspect or defendant shall indicate the identity and correspondence address of the lawyers.

第三十条 辩护律师可以根据办理案件需要与在押犯罪嫌疑人、被告人通信。辩护律师与犯罪嫌疑人、被告人通信应当注明律师身份、通信地址。

When communicating with a criminal suspect or defendant in custody, a defense lawyer shall keep the duplicate of the correspondence and original letter of the criminal suspect or defendant, and attach them to the case file for future reference.

辩护律师与在押犯罪嫌疑人、被告人通信时，应当保留信函副本及犯罪嫌疑人、被告人的来信原件并附卷备查。

**Article 31** Meeting and communication between a defense lawyer and a criminal suspect or defendant under residential confinement shall be governed by the relevant provisions of this section.

第三十一条 辩护律师同被监视居住的犯罪嫌疑人、被告人会见、通信，适用本节有关规定。

#### Section 4 Consultation, Excerption and Copying of Case Materials

#### 第四节 查阅、摘抄、复制案卷材料

**Article 32** From the date of the transfer of a case for examination for prosecution, a defense lawyer or representing lawyer shall contact the people's procuratorate and the people's court in a timely manner, and handle consultation, excerption and copying of case materials and other matters.

第三十二条 自案件移送审查起诉之日起，辩护律师、代理律师应当及时与人民检察院、人民法院联系，办理查阅、摘抄、复制案卷材料等事宜。

**Article 33** The case file materials include the process and evidentiary materials of a case. Where real-time audio and video recordings shall be made for the interrogation process according to the provisions of the relevant law, a defense lawyer or representing lawyer may, according to the needs of a case, request consultation and copying according to the law.

第三十三条 案卷材料包括案件的诉讼文书和证据材料。根据相关法律的规定，对讯问过程应当进行同步录音录像的，辩护律师、代理律师可以根据案件需要依法要求查阅、复制。

**Article 34** The case materials may be copied by duplicating, photographing, scanning, copying of electronic data and other means. The accuracy and completeness shall be guaranteed at the time of excerption and copying.

第三十四条 复制案卷材料可以采用复印、拍照、扫描、电子数据拷贝等方式。摘抄、复制时应当保证其准确性、完整性。

**Article 35** The following case materials shall be consulted and copied by a defense lawyer or representing lawyer in a timely manner:

第三十五条 对于以下案卷材料，辩护律师、代理律师应当及时查阅、复制：



(1) the evidentiary materials of further investigation by the investigation authority or procuratorial authority;

(一) 侦查机关、检察机关补充侦查的证据材料;

(2) the evidentiary materials on the innocence of the criminal suspect or defendant or the pettiness of a crime that have been collected during the period of investigation and examination for prosecution obtained by the people's procuratorate and the people's court from the investigation authority and the public prosecution authority according to the application of the criminal suspect, defendant or defense lawyer; and

(二) 人民检察院、人民法院根据犯罪嫌疑人、被告人、辩护律师的申请向侦查机关、公诉机关调取在侦查、审查起诉期间已收集的有关犯罪嫌疑人、被告人无罪、罪轻的证据材料;

(3) the evidentiary materials not submitted by the procuratorial authority and the materials on surrender, confession, meritorious acts and other sentencing circumstances concerning the defendant obtained by the people's court according to the application of the defendant or defense lawyer.

(三) 人民法院根据被告人、辩护律师的申请调取的检察机关未移送的证据材料以及有关被告人自首、坦白、立功等量刑情节的材料。

**Article 36** A defense lawyer shall carefully study all the case files and prepare a transcript on consultation of the case files or excerption of the case files according to the needs of the case. A defense lawyer shall focus on the following matters when consulting the case files:

**第三十六条** 辩护律师应当认真研读全部案卷材料, 根据案情需要制作阅卷笔录或案卷摘要。阅卷时应当重点了解以下事项:

(1) the personal information and other basic information on the criminal suspect or defendant;

(一) 犯罪嫌疑人、被告人的个人信息等基本情况;

(2) the time, place, motive, purpose, means and consequences of the crime that the criminal suspect or defendant is deemed to be suspect of or is charged, and other statutory and discretionary circumstances that may affect the conviction and sentencing of the criminal suspect or defendant;

(二) 犯罪嫌疑人、被告人被认定涉嫌或被指控犯罪的时间、地点、动机、目的、手段、后果及其他可能影响定罪量刑的法定、酌定情节等;

(3) the facts and materials on the innocence of the criminal suspect or defendant or the pettiness of a crime;

（三）犯罪嫌疑人、被告人无罪、罪轻的事实和材料；

(4) the identity, competence or qualification and other relevant information on the witness, authentication expert, and person preparing the transcript on investigation and inspection;

（四）证人、鉴定人、勘验检查笔录制作人的身份、资质或资格等相关情况；

(5) the personal information and other basic information on the victim;

（五）被害人的个人信息等基本情况；

(6) whether the legal formalities and process during the process of investigation and examination for prosecution are lawful and complete;

（六）侦查、审查起诉期间的法律程序和诉讼文书是否合法、齐备；

(7) the source of the authentication materials, authentication opinions and reasons, and whether the authentication institution has the authentication qualification, etc.;

（七）鉴定材料的来源、鉴定意见及理由、鉴定机构是否具有鉴定资格等；

(8) the relevant information on the criminal suspects or defendants in a same case;

（八）同案犯罪嫌疑人、被告人的有关情况；

(9) the authenticity, legitimacy and relevance of the evidence, and the contradictions and doubtful points of the evidence;

（九）证据的真实性、合法性和关联性，证据之间的矛盾与疑点；

(10) whether the evidence may prove the fact of the suspected or charged crime as determined in the written prosecution opinion and written indictment;

（十）证据能否证明起诉意见书、起诉书所认定涉嫌或指控的犯罪事实；

(11) whether evidence is illegally obtained;

（十一）是否存在非法取证的情况；

(12) whether the legal representative or appropriate adult is present at the time of interrogation in a criminal case involving minors;

(十二) 未成年人刑事案件，在被讯问时法定代理人或合适成年人是否在场；

(13) the information on seizure, detainment, freezing and transfer of the property in dispute; and

(十三) 涉案财物查封、扣押、冻结和移送的情况；

(14) other information relevant to the case.

(十四) 其他与案件有关的情况。

**Article 37** The case materials obtained by a lawyer participating in criminal proceedings may not be provided for any relative or friend of the criminal suspect or defendant, or be disclosed to the media or the public without permission.

第三十七条 律师参与刑事诉讼获取的案卷材料，不得向犯罪嫌疑人、被告人的亲友以及其他单位和个人提供，不得擅自向媒体或社会公众披露。

Where the case materials to be consulted, excerpted and copied by a defense lawyer are state secrets, the consent of the people's procuratorate and the people's court shall be obtained and the provisions on confidentiality issued by the state shall be complied with. No lawyer shall, in violation of the provisions, disclose or disseminate any important case information or file materials, or use them for purposes other than defense and representation for the case.

辩护律师查阅、摘抄、复制的案卷材料属于国家秘密的，应当经过人民检察院、人民法院同意并遵守国家保密规定。律师不得违反规定，披露、散布案件重要信息和案卷材料，或者将其用于本案辩护、代理以外的其他用途。

Section 5 Investigation and Collection of Evidence

第五节 调查取证



**Article 38** A defense lawyer may, with the consent of the witness or other relevant entities and individuals, collect evidentiary materials relevant to the case from them; and a dissenting person under investigation may apply to the people's procuratorate or the people's court for collection and consultation of relevant evidence or apply to the people's court for notifying the witness to testify in court.

With the approval of the people's procuratorate or the people's court, and with the consent of the victim or his or her close relative and the witnesses provided by the victim, the defense lawyer may collect evidentiary materials relevant to the case from them.

**Article 39** A defense lawyer that investigates a case, conducts investigation and obtains evidence, and verifies evidence from a witness having testified in the investigation authority or procuratorial authority according to the case needs shall generally apply to the people's court for notifying the witness of appearing in court and inquire the witness in court. If a witness is unable to testify in court, a defense lawyer shall, when directly conducting investigation of and collecting evidence from the witness, strictly comply with the law, may also make audio and video recordings of the evidence obtaining process, and may also consult the testimony written by the witness.

**Article 40** A defense lawyer conducting investigation or collecting evidences relevant to a case shall hold a certificate issued by the law firm, produce a lawyer's practicing certificate, and usually be accompanied by another person.

第三十八条 辩护律师经证人或者其他有关单位和个人同意，可以向他们收集与案件有关的证据材料；被调查人不同意的，可以申请人民检察院、人民法院收集、调取相关证据，或者申请人民法院通知该证人出庭作证。

辩护律师经人民检察院或者人民法院许可，并且经被害人或者其近亲属、被害人提供的证人同意，可以向他们收集与案件有关的证据材料。

第三十九条 辩护律师根据案件需要向已经在侦查机关、检察机关做过证的证人了解案件情况、调查取证、核实证据，一般应当通过申请人民法院通知该证人到庭，以当庭接受询问的方式进行。如证人不能出庭作证的，辩护律师直接向证人调查取证时，应当严格依法进行，并可以对取证过程进行录音或录像，也可以调取证人自书证言。

第四十条 辩护律师调查、收集与案件有关的证据材料，应当持律师事务所证明，出示律师执业证书，一般由二人进行。

**Article 41** When conducting investigation or collecting evidentiary materials, a defense lawyer may invite a person irrelevant to the case to witness according to the case needs, to ensure the authenticity of the evidentiary materials.

第四十一条 辩护律师调查、收集证据材料时，为保证证据材料的真实性，可以根据案情需要邀请与案件无关的人员在场见证。

**Article 42** A defense lawyer investigating a witness shall prepare an investigation transcript. An investigation transcript shall specify the investigator, the person under investigation, the name of the recorder, the time and place of investigation, the identification of the person under investigation, the requirement of truthfully providing testimony by a witness, notes on assuming legal liability for perjury or concealing criminal evidence, the matters under investigation, etc.

第四十二条 辩护律师对证人进行调查，应当制作调查笔录。调查笔录应当载明调查人、被调查人、记录人的姓名，调查的时间、地点，被调查人的身份信息，证人如实作证的要求，作伪证或隐匿罪证应当负法律责任的说明以及被调查事项等。

**Article 43** An investigation transcript prepared by a defense lawyer shall objectively and accurately record the investigation contents and be verified by the person under investigation. A person under investigation making amendment or supplement shall affix signature and seal and make a fingerprint to the place of amendment. After an investigation transcript is checked by the person under investigation, the person under investigation shall affix signatures thereto page by page and sign the opinions that the record is correct on the last page.

第四十三条 辩护律师制作调查笔录，应当客观、准确地记录调查内容，并经被调查人核对。被调查人如有修改、补充，应当由其在修改处签字、盖章或者捺指印确认。调查笔录经被调查人核对后，应当由其在笔录上逐页签名并在末页签署记录无误的意见。

**Article 44** When preparing an investigation transcript, a defense lawyer may not mislead or induce any witness. No transcript shall be written in advance; no transcript of any criminal suspect, defendant, or any other witness shall be announced to any witness in advance; no testimony shall be written on behalf of any witness; no alteration or addition of any transcript shall be allowed; investigation of and collecting evidence from different witnesses shall be carried out separately; and no relative or friend of any criminal suspect or defendant shall be present at the time of investigation and collecting evidence.

第四十四条 辩护律师制作调查笔录不得误导、引诱证人。不得事先书写笔录内容；不得先行向证人宣读犯罪嫌疑人、被告人或其他证人的笔录；不得替证人代书证言；不得擅自更改、添加笔录内容；向不同的证人调查取证时应当分别进行；调查取证时犯罪嫌疑人、被告人的亲友不得在场。

**Article 45** When collecting physical evidence, documentary evidence and audio-visual materials, a defense lawyer shall obtain the originals as far as possible; and may copy, photograph or videotape them, and record the places where the originals are deposited and the holders of the originals, where the originals are unable to be obtained.

第四十五条 辩护律师收集物证、书证和视听资料时，应当尽可能提取原件；无法提取原件的，可以复制、拍照或者录像，并记录原件存放地点和持有人的信息。

**Article 46** A defense lawyer may apply to the people's procuratorate or the people's court for collection and obtaining of the electronic evidence relevant to the case.

第四十六条 辩护律师可以申请人民检察院、人民法院收集、调取案件有关的电子证据。



A defense lawyer may collect and fix email, electronic data interchange, online chatting records, blog, micro-blog, WeChat, SMS, electronic signatures, domains and other electronic data by copying, printing, screenshot, photographing, videotaping and other means, record the time, place, storage location of original storage media, sources of electronic data, holders and other information on copying, printing, screenshot, photographing and videotaping, and entrust an notary institution to notarize the aforesaid process if necessary.

The original storage media shall be collected as far as possible for electronic data in the storage media. Electronic data in cyberspace may be obtained from the authority or be fixed by notarization.

**Article 47** When investigating or collecting the evidentiary materials, a defense lawyer may make audio and video recordings.

**Article 48** Where a defense lawyer believes that any evidence collected by the public security authority or people's procuratorate during the period of criminal investigation or examination for prosecution regarding the innocence of a criminal suspect or defendant or the pettiness of a crime has not been submitted, the defense lawyer shall have the right to apply to the people's procuratorate or people's court in writing for taking such evidence.

**Article 49** When the people's procuratorate or the people's court collects evidence according to the application, the defense lawyer may be present.

辩护律师可以采取复制、打印、截屏、拍照或者录像等方式收集、固定电子邮件、电子数据交换、网上聊天记录、博客、微博客、微信、手机短信、电子签名、域名等电子数据，并记录复制、打印、截屏、拍照、录像的时间、地点、原始储存介质存放地点、电子数据来源、持有人等信息，必要时可以委托公证机构对上述过程进行公证。

对于存在于存储介质中的电子数据，应当尽可能收集原始存储介质。对于存在于网络空间中的电子数据，可以通过有权方提取或通过公证形式予以固定。

**第四十七条** 辩护律师在调查、收集证据材料时，可以录音、录像。

**第四十八条** 辩护律师认为在侦查、审查起诉期间公安机关、人民检察院收集的证明犯罪嫌疑人、被告人无罪或者罪轻的证据材料未提交的，应当书面申请人民检察院、人民法院调取。

**第四十九条** 人民检察院、人民法院根据申请收集、调取证据时，辩护律师可以在场。

**Article 50** A defense lawyer shall inform the case handling authority in a timely manner of the evidence collected regarding a criminal suspect or defendant's alibi or the fact that the criminal suspect or defendant has not attained the age for criminal liability or is a mental patient exempted from criminal liability. A defense lawyer may request the case handling authority that collects evidence to issue a receipt.

**第五十条** 辩护律师收集的有关犯罪嫌疑人、被告人不在犯罪现场、未达到刑事责任年龄、属于依法不负刑事责任的精神病人的证据，应当及时告知办案机关。辩护律师可以要求收取证据的办案机关出具回执。

## Section 6 Application for Modification or Removal of Compulsory Measures

## 第六节 申请变更、解除强制措施

**Article 51** A defense lawyer believing that a criminal suspect or defendant in custody meets the following conditions for bail shall apply for bail therefor:

**第五十一条** 辩护律师认为被羁押的犯罪嫌疑人、被告人符合下列取保候审的条件，应当为其申请取保候审：

(1) The criminal suspect or defendant may be sentenced to supervision without incarceration, limited incarceration, or an accessory penalty only.

(一) 可能判处管制、拘役或者独立适用附加刑的；

(2) The criminal suspect or defendant may be sentenced to fixed-term imprisonment or a heavier penalty but will not cause danger to the society if granted bail.

(二) 可能判处有期徒刑以上刑罚，采取取保候审措施不致发生社会危险性的；

(3) The criminal suspect or defendant suffers a serious illness, or cannot take care of himself or herself, and will not cause danger to the society if granted bail.

(三) 犯罪嫌疑人、被告人患有严重疾病、生活不能自理，采取取保候审措施不致发生社会危险性的；

(4) The criminal suspect or defendant is a pregnant woman or a woman who is breastfeeding her own baby, and will not cause danger to the society if granted bail.

(四) 犯罪嫌疑人、被告人正在怀孕或者哺乳自己的婴儿，采取取保候审措施不致发生社会危险性的；

(5) The term of custody of the criminal suspect or defendant has expired but the case has not been closed, and a bail is necessary.

（五）羁押期限届满，案件尚未办结，需要采取取保候审措施的。

**Article 52** Where a criminal suspect or defendant meets the arrest conditions, but meets one of the following conditions, a defense lawyer may apply for residential surveillance for the criminal suspect or defendant:

第五十二条 犯罪嫌疑人、被告人符合逮捕条件，但具备下列条件之一，辩护律师可以为其申请监视居住：

(1) The criminal suspect or defendant suffers a serious illness or cannot take care of himself or herself.

（一）患有严重疾病、生活不能自理的；

(2) The criminal suspect or defendant is a pregnant woman or a woman who is breastfeeding her own baby.

（二）怀孕或者正在哺乳自己婴儿的妇女；

(3) The criminal suspect or defendant is the sole supporter of a person who cannot take care of himself or herself.

（三）系生活不能自理的人的唯一抚养人；

(4) Considering the special circumstances of the case or as needed for handling the case, residential confinement is more appropriate.

（四）因为案件的特殊情况或者办理案件的需要，采取监视居住措施更为适宜的；

(5) The term of custody has expired but the case has not been closed, and residential confinement is necessary.

（五）羁押期限届满，案件尚未办结，需要采取监视居住措施的。

**Article 53** Where a criminal suspect or defendant meets the conditions for bail but is neither able to provide a surety nor able to pay a bond, the defense lawyer may apply for residential surveillance for him or her.

第五十三条 犯罪嫌疑人、被告人符合取保候审条件，但不能提出保证人也不缴纳保证金的，辩护律师可以为其申请监视居住。



**Article 54** Where a case in which the criminal suspect or defendant is in custody is not closed by the case handling authority within the term of custody as prescribed in the Criminal Procedure Law, the defense lawyer may request release of the criminal suspect or defendant, or request change in the compulsory measure.

Where a case in which the criminal suspect or defendant is granted bail or subject to residential surveillance is not closed by the case handling authority within the term of compulsory measure as prescribed in the Criminal Procedure Law, the defense lawyer may request release of the criminal suspect or defendant, or request termination of the compulsory measure.

**Article 55** Where a criminal suspect is subject to residential confinement at the designated residence during the period of investigation on suspicion of committing a crime of endangering national security, a crime of terrorist activities, or a crime of especially serious bribery, after the circumstance that affects investigation disappears, the defense lawyer may apply for residential confinement at the residence or bail for the criminal suspect.

**Article 56** Where a criminal suspect or defendant, and his or her legal representative or near relatives request the defense lawyer to apply for modification and termination of the compulsory measure or release of the criminal suspect or defendant and the defense lawyer believe that the conditions are met, the defense lawyer may file an application on his or her own or assist them in filing an application with the case handling authority.

**第五十四条** 犯罪嫌疑人、被告人被羁押的案件，办案机关在《刑事诉讼法》规定的羁押期限内未能办结的，辩护律师可以要求释放犯罪嫌疑人、被告人，或者要求变更强制措施。

对被采取取保候审、监视居住措施的犯罪嫌疑人、被告人，办案机关在《刑事诉讼法》规定的强制措施期限内未能办结的，辩护律师可以要求解除强制措施。

**第五十五条** 犯罪嫌疑人因涉嫌危害国家安全犯罪、恐怖活动犯罪、特别重大贿赂犯罪在侦查期间被指定居所监视居住的，在有碍侦查的情形消失后，辩护律师可以为其申请在居所监视居住或者取保候审。

**第五十六条** 犯罪嫌疑人、被告人及其法定代理人、近亲属要求辩护律师申请变更、解除强制措施或释放犯罪嫌疑人、被告人，辩护律师认为符合条件的，可以自行申请，也可以协助其向办案机关申请。

**Article 57** A defense lawyer applying in writing to a case handling authority for modification or termination of the compulsory measure or release of a criminal suspect or defendant shall specify the name of the law firm, the name of the lawyer, the correspondence address and contact information, the name of the criminal suspect or defendant, the facts and grounds for application, ways of surety, etc.

第五十七条 辩护律师向办案机关书面申请变更、解除强制措施或者释放犯罪嫌疑人、被告人的，应当写明律师事务所名称、律师姓名、通信地址及联系方式、犯罪嫌疑人、被告人姓名和所涉嫌疑或指控的罪名、申请事实及理由、保证方式等。

A defense lawyer is inappropriate to serve as the surety of any criminal suspect or defendant.

辩护律师不宜为犯罪嫌疑人、被告人担任保证人。

**Article 58** A defense lawyer applying for modification or termination of the compulsory measure or release of a criminal suspect or defendant may request the case handling authority to issue a reply of approval or disapproval within 3 days. Where a reply of disapproval is issued, the defense lawyer may request the authority to explain the reasons for disapproval.

第五十八条 辩护律师申请变更、解除强制措施或释放犯罪嫌疑人、被告人的，可以要求办案机关在三日内作出同意或者不同意的答复。对于不同意的，辩护律师可以要求其说明不同意的理由。

**Article 59** After a criminal suspect is arrested, the criminal suspect may request the procuratorial authority to conduct examination on the necessity of custody.

第五十九条 犯罪嫌疑人被逮捕后，辩护律师可以向检察机关提出羁押必要性审查的意见。

Chapter II Defense Work during the Investigation Period

第二章 侦查期间的辩护工作

**Article 60** During the investigation period, after accepting representation, a lawyer may, from the day when the criminal suspect is interrogated for the first time or from the day when a compulsory measure is taken against the criminal suspect, learn the relevant case information from the investigation authority, including the charges against the criminal suspect, the main facts that have been ascertained, the compulsory measures taken against, and modified and terminated for the criminal suspect, extension of the investigation and custody period, etc.

**Article 61** A defense lawyer providing legal consulting for a criminal suspect shall notify the criminal suspect of the basic procedural rights, mainly including the following contents:

(1) A criminal suspect has the right not to be forced to commit self-incrimination.

(2) A criminal suspect has the right to file petition and accusation for the case handling authority's infringement acts or violations of procedural law.

(3) A criminal suspect has the right to apply for the disqualification of the investigator.

(4) A criminal suspect has the right to know the expert opinions and raise objections.

(5) A criminal suspect has the right to raise an objection against the jurisdiction of a criminal case.

(6) The rights concerning criminal reconciliation.

第六十条 侦查期间，律师接受委托后，自犯罪嫌疑人被第一次讯问或者采取强制措施之日起，可以向侦查机关了解案件情况，包括犯罪嫌疑人涉嫌的罪名、已查明的主要事实、犯罪嫌疑人被采取、变更、解除强制措施、延长侦查羁押期限等。

第六十一条 辩护律师为犯罪嫌疑人提供法律咨询，应当告知其基本诉讼权利，主要包括以下内容：

（一）犯罪嫌疑人有不被强迫证实自己有罪的权利；

（二）犯罪嫌疑人有对办案机关侵权行为、程序违法提出申诉和控告的权利；

（三）犯罪嫌疑人有申请侦查人员回避的权利；

（四）犯罪嫌疑人有知悉鉴定意见和提出异议的权利；

（五）犯罪嫌疑人有对刑事案件管辖提出异议的权利；

（六）有关刑事和解的权利。



**Article 62** A defense lawyer shall provide the criminal suspect with legal consulting on compulsory measures, mainly including the following contents:

- (1) the types of the compulsory measures;
- (2) the legal provisions on the conditions and applicable procedures of the compulsory measures;
- (3) the legal provisions on the duration of the compulsory measures; and
- (4) the rights and conditions of applying for changes in the compulsory measures.

**Article 63** A defense lawyer shall provide the criminal suspect with legal consulting on interrogation by the investigation authority, mainly including the following contents:

- (1) A criminal suspect has the obligation to truthfully answer the interrogation of the investigators, and has the right to refuse to answer questions irrelevant to a case.
- (2) A criminal suspect has the right to check, supplement and correct the transcript of interrogation made by the investigators, and has the obligation to affix signature to the transcript of interrogation after confirming that the transcript of interrogation is free of errors.
- (3) A criminal suspect has the right to request permission for personal writing of confession and defense.

**第六十二条** 辩护律师为犯罪嫌疑人提供关于强制措施的法律咨询，主要包括以下内容：

- （一）强制措施的种类；
- （二）强制措施的条件、适用程序的法律规定；
- （三）强制措施期限的法律规定；
- （四）申请变更强制措施的权利及条件。

**第六十三条** 辩护律师为犯罪嫌疑人提供关于侦查机关讯问方面的法律咨询，主要包括以下内容：

- （一）犯罪嫌疑人对侦查人员的讯问有如实回答的义务，对与本案无关的问题有拒绝回答的权利；
- （二）犯罪嫌疑人对侦查人员制作的讯问笔录有核对、补充、更正的权利以及在确认笔录没有错误后应当签名的义务；
- （三）犯罪嫌疑人有要求自行书写供述和辩解的权利；

(4) A criminal suspect has the right to be rendered a lenient sentence if the criminal suspect truthfully confesses his or her crime.

(四) 犯罪嫌疑人有如实供述犯罪事实可以获得从宽处罚的权利。

**Article 64** A defense lawyer shall provide the criminal suspect with legal consulting on elements of a crime and evidence, mainly including the following contents:

第六十四条 辩护律师为犯罪嫌疑人提供关于犯罪构成与证据方面的法律咨询，主要包括以下内容：

(1) the relevant provisions of the Criminal Law and relevant judicial interpretations on the charges against the criminal suspect;

(一) 刑法及相关司法解释关于犯罪嫌疑人所涉嫌罪名的相关规定；

(2) the relevant provisions of the Criminal Law and relevant judicial interpretations on severer, lighter, or mitigated punishment and exemption from punishment;

(二) 刑法及相关司法解释关于从重、从轻、减轻以及免予处罚的相关规定；

(3) the relevant provisions on the burden of proof in criminal cases;

(三) 关于刑事案件的举证责任的相关规定；

(4) the relevant provisions on the meaning, type, collection and use of evidence; and

(四) 关于证据的含义、种类及收集、使用的相关规定；

(5) the relevant provisions on the exclusion of illegally collected evidence.

(五) 关于非法证据排除的相关规定。

**Article 65** During the period of investigation, when collecting the evidentiary materials regarding a criminal suspect's alibi or the fact that the criminal suspect or defendant has not attained the age for criminal liability or is a mental patient exempted from criminal liability, a defense lawyer shall submit the defense opinions on innocence or not being subject to criminal liability to the investigation authority, and concurrently request the investigation authority to release the criminal suspect or change the compulsory measures against him or her.

**Article 66** During the investigation period of a case and prior to the termination of investigation, a defense lawyer that submits the defense opinions on the substantive and procedural issues to the investigation authority may submit opinions verbally or in writing.

For illegally collected evidence, a defense lawyer may submit the opinions of exclusion.

**Article 67** A defense lawyer shall examine the legality of the case jurisdiction and file an objection with the investigation authority in writing, when finding that the jurisdiction of the investigation authority violates the law.

**Article 68** During the process of examination and approval of arrest, a defense lawyer believing that the criminal suspect falls under the following circumstances may submit the opinions of disapproving arrest or not arresting to the procuratorial authority:

(1) The criminal suspect does not constitute a crime.

第六十五条 侦查期间，辩护律师收集到有关犯罪嫌疑人不在犯罪现场、未达到刑事责任年龄、属于依法不负刑事责任的精神病人的证据材料时，应当及时向侦查机关提出无罪或不予追究刑事责任的辩护意见，并同时要求侦查机关释放犯罪嫌疑人或对其变更强制措施。

第六十六条 在案件侦查期间和侦查终结前，辩护律师向侦查机关就实体和程序问题提出辩护意见的，可以口头或书面的方式提出。

对于非法证据，辩护律师可以提出予以排除的意见。

第六十七条 辩护律师应当对案件管辖合法性进行审查，发现侦查机关管辖违反法律规定的，应当以书面方式向侦查机关提出异议。

第六十八条 在审查批捕过程中，辩护律师认为具备下列情形的，可以向检察机关提出不批准逮捕或不予逮捕的意见：

（一）犯罪嫌疑人不构成犯罪；



(2) The criminal suspect may be sentenced to fixed-term imprisonment of one year or a lighter punishment.

(二) 可能被判处一年有期徒刑以下刑罚的;

(3) The criminal suspect will not cause danger to the society.

(三) 无社会危险性;

(4) The criminal suspect is not suitable for custody.

(四) 不适宜羁押。

**Article 69** Where an investigation authority and its staff members have the following acts, a defense lawyer may file petition or accusation with the authority:

**第六十九条** 辩护律师对于侦查机关及其工作人员有下列行为的, 可以向该机关申诉或者控告:

(1) Upon expiry of the statutory time limit for compulsory measures, the investigation authority and its staff members do not terminate or change the compulsory measures or release the criminal suspect.

(一) 采取强制措施法定期限届满, 不予以解除、变更强制措施或者释放犯罪嫌疑人;

(2) The investigation authority and its staff members do not refund the bail bond that shall be refunded.

(二) 应当退还取保候审保证金不予退还的;

(3) The investigation authority and its staff members seize, impound, or freeze any property irrelevant to a case.

(三) 对与案件无关的财物采取查封、扣押、冻结措施的;

(4) The investigation authority and its staff members refuse to terminate a measure of seizing, impounding, or freezing property that shall be terminated.

(四) 应当解除查封、扣押、冻结不予解除的;

(5) The investigation authority and its staff members embezzle, misappropriate, distribute in private, replace, or illegally use any seized, impounded, or frozen property.

(五) 贪污、挪用、私分、调换或其他违反规定使用查封、扣押、冻结财物的。

A defense lawyer may request the investigation authority that accepts a petition or accusation to handle it in a timely manner, and may file a petition with the people's procuratorate at the same level, where the people's procuratorate fails to handle it in a timely manner or the defense lawyer refuses to accept the handling result; and may file a petition with the people's procuratorate at the next higher level, for a case directly accepted by the people's procuratorate.

辩护律师可以要求受理申诉或者控告的侦查机关及时处理，对不及时处理或对处理结果不服的，可以向同级人民检察院申诉；人民检察院直接受理的案件，可以向上一级人民检察院申诉。

### Chapter III Defense Work during the Examination for Prosecution

### 第三章 审查起诉期间的辩护工作

**Article 70** During the period of examination for prosecution, a defense lawyer shall consult, excerpt and copy the case file materials in a timely manner, and meet the criminal suspect to verify evidence according to the case information.

**第七十条** 审查起诉期间，辩护律师应当及时查阅、摘抄、复制案卷材料，并根据案件情况会见犯罪嫌疑人核实证据。

**Article 71** Failing to meet a criminal suspect during the investigation period, a defense lawyer shall meet the criminal suspect and provide consultation during the period of examination for prosecution according to the provisions from Articles 61 to 64 of these Rules.

**第七十一条** 辩护律师在侦查期间未能会见犯罪嫌疑人的，在审查起诉期间会见犯罪嫌疑人提供咨询的适用本规范第六十一条至第六十四条之规定。

**Article 72** During the period of examination for prosecution, a defense lawyer may submit verbal or written defense opinions to the procuratorial authority from the procedural, substantive and other respects.

**第七十二条** 审查起诉期间，辩护律师可以从程序、实体等方面向检察机关提出口头或书面辩护意见。

For evidence collected by illegal means, a defense lawyer shall submit the opinions on the exclusion of evidence to the procuratorial authority.

对于以非法方法收集的证据，辩护律师应当及时向检察机关提出对该证据予以排除的意见。

**Article 73** During the period of examination for prosecution, when collecting the evidentiary materials regarding a criminal suspect's alibi or the fact that the criminal suspect or defendant has not attained the age for criminal liability or is a mental patient exempted from criminal liability, a defense lawyer shall submit the defense opinions on innocence or not being subject to criminal liability to the procuratorial authority, and concurrently request the procuratorial authority to release the criminal suspect or change the compulsory measures against him or her.

第七十三条 审查起诉期间，辩护律师收集到有关犯罪嫌疑人在不在犯罪现场、未达到刑事责任年龄、属于依法不负刑事责任的精神病人的证据材料时，应当及时向检察机关提出无罪或不予追究刑事责任的辩护意见，并同时要求检察机关释放犯罪嫌疑人或对其变更强制措施。

**Article 74** During the period of examination for prosecution, a defense lawyer believing that the criminal suspect has no facts of a crime or falling under one of the circumstances as set forth in Article 15 of the Criminal Procedure Law shall submit the opinions of not initiating a public prosecution to the procuratorial authority.

第七十四条 审查起诉期间，辩护律师认为犯罪嫌疑人没有犯罪事实，或者符合《刑事诉讼法》第十五条规定的情形之一的，应当向检察机关提出不起诉的意见。

**Article 75** During the period of examination for prosecution, a defense lawyer believing that the circumstances of a criminal suspect's crime is minor and no criminal punishment is necessary or the criminal suspect is exempted from criminal punishment in accordance with the Criminal Law shall submit the opinions of not initiating a public prosecution to the procuratorial authority.

第七十五条 审查起诉期间，辩护律师认为犯罪嫌疑人犯罪情节轻微，依照刑法规定不需要判处刑罚或者免除刑罚的，应当向检察机关提出不起诉的意见。



**Article 76** During the period of examination for prosecution, a defense lawyer believing that evidence is insufficient and the conditions for a public prosecution are not met for a case for which supplementary investigation has been conducted once or twice shall submit the opinions of not initiating a public prosecution to the procuratorial authority.

第七十六条 审查起诉期间，对于经一次或二次补充侦查的案件，辩护律师认为证据不足，不符合起诉条件的，应当向检察机关提出不起诉的意见。

#### Chapter IV Defense Work in Public Prosecution Cases of First Instance

#### 第四章 公诉一审案件的辩护工作

##### Section 1 Pre-trial Preparation

##### 第一节 庭前准备

**Article 77** Before court session is held, a defense lawyer shall study the evidentiary materials, relevant laws and precedents, be familiar with the professional knowledge involved in the case, develop a defense plan, and prepare for an questioning outline, cross-examination outline, proof outline and defense outline, among others.

第七十七条 在开庭审理前，辩护律师应当研究证据材料、有关法律、判例，熟悉案件涉及的专业知识，拟定辩护方案，准备发问提纲、质证提纲、举证提纲、辩护提纲等。

**Article 78** Where the people's court convenes a pretrial conference, the defense lawyer may submit opinions or file an application on the following matters:

第七十八条 人民法院召集庭前会议的，辩护律师可以就下列事项提出意见或申请：

(1) objection on case jurisdiction;

（一）案件管辖异议；

(2) applying for disqualification;

（二）申请回避；

(3) applying for taking evidence;

（三）申请调取证据；

(4) whether the summary procedures are applicable;

（四）是否适用简易程序；

(5) whether or not to hear a case in camera;

（五）是否公开审理；

- |  |                        |
|--|------------------------|
| (6) opening time of the court session;   | (六) 开庭时间;              |
| (7) applying for notifying witnesses of testifying in court;                                     | (七) 申请通知证人出庭作证;        |
| (8) applying for authentication experts to testify in court;                                     | (八) 申请鉴定人出庭作证;         |
| (9) applying for personnel with specialized knowledge to appear in court;                        | (九) 申请具有专门知识的人员出庭;     |
| (10) whether to extend the time limit for trial;   | (十) 是否延长审限;            |
| (11) applying for viewing the real-time audio and video recordings of the interrogation process; | (十一) 申请查看讯问过程的同步录音、录像; |
| (12) applying for exclusion of illegally collected evidence;                                     | (十二) 申请非法证据排除;         |
| (13) negotiation on the method of evidence production and cross-examination;                     | (十三) 举证、质证方式的磋商;       |
| (14) participating in the mediation for an incidental civil action; and                          | (十四) 参与附带民事诉讼的调解;      |
| (15) other matters relevant to trial.  | (十五) 其他与审理相关的事项。       |

**Article 79** Where the people's court does not hold a pretrial conference, a defense lawyer believing that there are aforesaid relevant causes may apply to the people's court for convening a pretrial conference.

第七十九条 人民法院未召开庭前会议，辩护律师认为有上述相关事由的，可以申请人民法院召开庭前会议。

**Article 80** Where the people's court does not notify a defendant of attending a pretrial conference, but the contents and decisions of the pretrial conference affect the defendant's exercising of the procedural right, the defense lawyer shall apply to the people's court for notifying the defendant of attending the pretrial conference.

Where the defendant fails to attend a pretrial conference, the defense lawyer may not express opinions on the substantive, evidential or procedural issues on behalf of the defendant without special authorization.

A defense lawyer shall attend a pretrial conference in strict accordance with the relevant provisions of the Criminal Procedure Law on pretrial conference and may not issue opinions on the issues to be resolved in court session according to the law.

**Article 81** To apply to the people's court for notifying witnesses, authentication experts, personnel with specialized knowledge and other persons of appearing in court, a defense lawyer shall develop a list of the aforesaid personnel, indicate their identity, addresses, communication methods, etc., and specify the purpose of appearing in court.

**Article 82** For the evidence that a defense lawyer intends to pronounce, produce and play in court, the defense lawyer may develop a list and specify the facts to be proved, and submit it to the people's court before a court session is held.

第八十条 人民法院没有通知被告人参加庭前会议，但庭前会议的内容和决定影响被告人行使诉讼权利的，辩护律师应当申请人民法院通知被告人参加庭前会议。

被告人未参加庭前会议的，辩护律师未经特别授权不得代表被告人对实体、证据和程序性问题发表意见。

辩护律师出席庭前会议应当严格遵守《刑事诉讼法》关于庭前会议的有关规定，不得就依法应当在开庭审理过程中解决的问题发表意见。

第八十一条 辩护律师申请人民法院通知证人、鉴定人、有专门知识的人等出庭的，应当制作上述人员名单，注明身份、住址、通讯方式等，并说明出庭目的。

第八十二条 辩护律师拟当庭宣读、出示、播放的证据，可以制作目录并说明所要证明的事实，在开庭前提交人民法院。



**Article 83** A defense lawyer shall, after receiving a notice of appearance, appear in court on time, and shall make a presentation to the people's court if he or she is unable to appear in court for the following justified reasons and specify the reasons, and apply for adjusting the date of court session:

(1) A defense lawyer receives two or more notice of appearances, and can only attend one of them on time.

(2) New evidence and clues are found before the court session is held and further investigation and evidence obtaining is required or personnel with specialized knowledge and witnesses intending to appear in court cannot appear in court for excuses.

(3) A defense lawyer cannot appear in court on time for other justified reasons.

A defense lawyer that applies for adjusting the date of court session, does not obtain permission, and is unable to appear in court by no means shall consult with the client and appropriately handle it.

**Article 84** A defense lawyer receiving a notice of appearance less than three days prior to the opening time of the court session may suggest that the people's court should change the opening date of the court session.

**第八十三条** 辩护律师接到出庭通知书后应当按时出庭，因下列正当理由不能出庭的，应当提前向人民法院提出并说明理由，申请调整开庭日期：

（一）辩护律师收到两个以上出庭通知，只能按时参加其中之一的；

（二）庭审前发现新的证据线索，需进一步调查取证或拟出庭的有专门知识的人、证人因故不能出庭的；

（三）因其他正当理由无法按时出庭的。

辩护律师申请调整开庭日期，未获准许又确实不能出庭的，应当与委托人协商，妥善解决。

**第八十四条** 辩护律师收到出庭通知书距开庭时间不满三日的，可以建议人民法院更改开庭日期。

**Article 85** A defense lawyer shall have the right to know about the public prosecutor, members of the collegial bench, clerk, authentication expert and interpreter, among others, and assist the defendant in determining whether there are any grounds for the application for disqualification and whether or not to file an application for disqualification.

第八十五条 辩护律师有权了解公诉人、合议庭组成人员、书记员、鉴定人和翻译人员等情况，协助被告人确定有无申请回避的事由及是否提出回避的申请。

## Section 2 Participating in Court Investigation

## 第二节 参加法庭调查

**Article 86** A defense lawyer participating in the trial of a case with more than two defendants shall be seated in order of the defendants accused in the written indictment.

第八十六条 辩护律师参加有两名以上被告人案件的审理，应当按起诉书指控被告人的顺序依次就座。

**Article 87** Where the members of the collegial bench, clerk, public prosecutor, authentication expert and interpreter fall under the following statutory circumstances of disqualification, after the presiding judge announces the defendant's procedural rights, a defense lawyer may, in light of the reality, propose and specify the grounds.

第八十七条 合议庭组成人员、书记员、公诉人、鉴定人和翻译人员具有法定回避情形的，在审判长宣布被告人的诉讼权利后，辩护律师可以根据情况提出，并说明理由。

**Article 88** Where the court makes mistakes in the verification of the defendant's age, identity, having or having not criminal records and other information, and may affect the trial of the case, the lawyer shall carefully keep records and conduct clarification when conducting court investigation.

第八十八条 法庭核对被告人年龄、身份、有无前科劣迹等情况有误，可能影响案件审理的，律师应当认真记录，在法庭调查时予以澄清。

**Article 89** After the public prosecutor, victim and his or her representing lawyer question the defendant, the defense lawyer may, with the permission of the presiding judge, have the right to question the defendant.

第八十九条 辩护律师在公诉人、被害人及其代理律师发问后，经审判长许可，有权向被告发问。

**Article 90** During the process of court investigation, with the permission of the presiding judge, the defense lawyer shall have the right to question the witnesses, authentication experts, victims, and personnel with specialized knowledge.

第九十条 在法庭调查过程中，经审判长许可，辩护律师有权对证人、鉴定人、被害人、有专门知识的人发问。

**Article 91** Where the public prosecutor, another defender, litigation representative and judge question by threatening, inducing or other illicit means, or raise questions that are irrelevant to this case and harm the personal dignity of the defendant, the defense lawyer may raise an objection and apply to the presiding judge for prohibiting the question.

第九十一条 公诉人、其他辩护人、诉讼代理人、审判人员以威胁、诱导或其他不当方式发问的，或发问问题与本案无关、损害被告人人格尊严的，辩护律师可以提出异议并申请审判长予以制止。

**Article 92** A defense lawyer shall question in a precise and specific manner, and focus on questions relevant to the conviction and sentencing.

第九十二条 辩护律师发问应当简洁、清楚，重点围绕与定罪量刑相关的事实进行发问。

**Article 93** A defense lawyer shall question witnesses, authentication experts and other persons according to the arrangements of the court. The questions shall focus on the conviction and sentencing.

第九十三条 对出庭的证人、鉴定人等，辩护律师应当按照法庭安排发问。发问内容应当重点针对定罪量刑相关的问题进行。

**Article 94** Where the public prosecutor raises an objection against a question raised by the defense lawyer, the defense lawyer may refute it. A decision made by the court shall be obeyed by the defense lawyer.

第九十四条 公诉人对辩护律师的发问提出反对或异议的，辩护律师可以进行反驳。法庭作出决定的，辩护律师应当服从。



**Article 95** A defense lawyer may consult with the public prosecutor and judge on the method of evidence production and cross-examination, and may, in light of the reality, issue cross-examination opinions on a single piece of evidence and issue comprehensive cross-examination opinions on a group of evidence, a type of evidence, or several pieces of evidence for certain fact to be proved.

A defense lawyer shall issue cross-examination opinions on the competency of evidence, probative force, purpose of conviction, standard of conviction, system of conviction, etc. by focusing on the authenticity, legitimacy and relevance of the evidence.

A defense lawyer may debate over the different cross-examination opinions issued by the public prosecutor and other litigation participants.

**Article 96** A defense lawyer believing that there may be any circumstance of collecting evidence by illegal means shall apply for exclusion of illegal evidence.

To apply for exclusion of illegally collected evidence, a defense lawyer may file an application before a court session is held; and where relevant clues or materials are found in the court trial, a defense lawyer may file an application in court session.

Where a defendant applies for exclusion of illegally collected evidence, the defense lawyer shall know about the personnel suspected of illegally collecting evidence, time, place, method, contents and other relevant clues or materials from the defendant.

第九十五条 辩护律师可以就举证质证方式与公诉人、审判人员进行协商，根据案件不同情况既可以对单个证据发表质证意见，也可以就一组证据、一类证据，或涉及某一待证事实的多份证据发表综合质证意见。

辩护律师应当围绕证据的真实性、合法性、关联性，就证据资格、证明力以及证明目的、证明标准、证明体系等发表质证意见。

对公诉人及其他诉讼参与人发表的不同的质证意见，辩护律师可以进行辩论。

第九十六条 辩护律师认为可能存在以非法方法收集证据情形的，应当申请排除非法证据。

辩护律师申请排除非法证据的，可以在开庭审理前提出；在庭审期间发现相关线索或者材料的，可以在开庭审理过程中提出。

被告人申请排除非法证据的，辩护律师应当向被告人了解涉嫌非法取证的人员、时间、地点、方式、内容等相关线索或者材料。

To apply for exclusion of illegally collected evidence, the defense lawyer may apply to the court for notifying the investigators of giving explanation in court, collecting and playing the audio and video recordings of investigative interrogation, and collecting other relevant evidence.

申请排除非法证据的，可以申请法庭通知侦查人员出庭说明情况，调取、播放侦查讯问录音、录像以及调取其他相关证据。

**Article 97** Witness testimony shall be cross-examined mainly from the following respects:

**第九十七条** 对证人证言，应当重点从以下方面进行质证：

(1) the relationship between the witness testimony and the facts to be proved;

（一）证人证言与待证事实的关系；

(2) whether there is interest between the witness and the parties to a case and the case handling results;

（二）证人与案件当事人、案件处理结果有无利害关系；

(3) whether the witness testimonies are mutually corroborated and the witness testimony and other evidence are mutually corroborated, and whether there is any contradiction;

（三）证人证言之间以及与其他证据之间能否相互印证，有无矛盾；

(4) whether the contents of the witness testimony are directly perceived by the witness;

（四）证人证言内容是否为证人直接感知；

(5) the environment, conditions and mental status of the witness when perceiving the facts of the case;

（五）证人感知案件事实时的环境、条件和精神状态；

(6) the witness's perceptivity, memory and expressive power;

（六）证人的感知力、记忆力和表达力；

(7) whether the witness testifies under the interference or influence by the outside world;

（七）证人作证是否受到外界的干扰或影响；

(8) the witness's age, and whether the witness has any physical or mental deficiency;

（八）证人的年龄以及生理上、精神上是否有缺陷；

(9) whether the witness testimony is inconsistent;

(九) 证人证言是否前后矛盾;

(10) whether the witness testimony is collected by illegal means such as violence or threat;

(十) 证人证言是否以暴力、威胁等非法方法收集;

(11) whether the procedures and methods for obtaining the witness testimony comply with the law and the relevant provisions;

(十一) 证人证言的取得程序、方式是否符合法律及有关规定;

(12) the reason why the witness cannot testify in court and the impact on the case; and

(十二) 证人不能出庭作证的原因及对本案的影响;

(13) other circumstances required to be cross-examined.

(十三) 需要质证的其他情形。

**Article 98** Where a public prosecutor requests a witness not listed in the list of witnesses in the evidentiary materials to testify in court, the defense lawyer shall have the right to request the court to postpone the trial.

第九十八条 公诉人提出在案证据材料中证人名单以外的证人出庭作证的, 辩护律师有权要求法庭延期审理。

Where a litigant, defense lawyer and public prosecutor have objection against a witness testimony and a witness testimony has a significant impact on the conviction and sentencing, the defense lawyer may apply to the court for notifying the witness of testifying in court.

对于当事人、辩护律师、公诉人有异议且对定罪量刑有重大影响的证人证言, 辩护律师可以申请法庭通知证人出庭作证。

**Article 99** The cross-examination over the statement of a victim shall be governed by the relevant provisions on cross-examination over witness testimony.

第九十九条 对被害人陈述的质证, 适用对证人证言质证的有关规范。

**Article 100** The confession and defense of a defendant shall be cross-examined mainly from the following respects:

第一百条 对被告人供述和辩解, 应当重点从以下方面质证:



(1) Whether the time and place of interrogation, the identity of the interrogator, and other items comply with the laws, judicial interpretations and relevant provisions.

（一）讯问的时间、地点和讯问人的身份等是否符合法律、司法解释及有关规定；

(2) Whether the preparation and modification of transcript of interrogation comply with the laws, judicial interpretations and relevant provisions.

（二）讯问笔录的制作、修改是否符合法律、司法解释及有关规定；

(3) Whether the defendant's confession has been obtained through extortion of confession by torture and by other illegal means.

（三）被告人的供述有无以刑讯逼供等非法手段获取的情形；

(4) Whether all confessions and defenses of a defendant have been transferred with the case and whether the confession is consistent.

（四）被告人的所有供述和辩解是否均已随案移送，供述是否前后一致；

(5) Whether the defendant's confession and defense are reasonable and consistent.

（五）被告人的供述和辩解是否符合常理，有无矛盾；

(6) Whether the defendant's confession and defense, the confession and defense of the other defendants in the same case, and other evidence are mutually corroborated, and whether there is any contradiction.

（六）被告人的供述和辩解与同案被告人的供述和辩解以及其他证据能否相互印证，有无矛盾；

(7) Where there are real-time audio and video recording materials, cross-examination may be conducted in combination with the relevant audio and video recording materials.

（七）有同步录音录像资料的，可以结合相关录音录像资料进行质证；

(8) Other circumstances required to be cross-examined.

（八）需要质证的其他情形。

**Article 101** Where a defense lawyer has any objection to the authentication opinions and the authentication opinions have an impact on the defendant's conviction and sentencing, the defense lawyer may apply to the people's court for notifying the authentication expert of testifying in court.

The authentication opinions shall be cross-examined mainly from the following respects:

(1) Whether the authentication expert has any relationship of interest with the case.

(2) Whether the authentication expert has any relationship of interest with the defendant or victim.

(3) Whether the authentication institution and authentication expert have legal qualifications.

(4) Whether the authentication procedures, process and methods comply with the provisions of the laws and regulations and satisfy the requirements of the professional norms.

(5) Whether the source, acquisition, safekeeping and submission of the samples to be tested comply with the law and the relevant provisions.

(6) Whether the authentication opinions are specific and whether the formal requirements are complete.

(7) Whether there is any connection between the authentication opinions and the facts of a case to be proved.

第一百零一条 辩护律师对鉴定意见有异议，且该鉴定意见对被告人定罪量刑有影响的，可以申请人民法院通知鉴定人出庭作证。

对鉴定意见，应当重点从以下方面质证：

（一）鉴定人与案件有无利害关系；

（二）鉴定人与被告人、被害人有无利害关系；

（三）鉴定机构和鉴定人有无合法资质；

（四）鉴定程序、过程、方法是否符合法律、法规的规定以及专业规范要求；

（五）检材的来源、取得、保管、送检是否符合法律及有关规定；

（六）鉴定意见是否明确，形式要件是否完备；

（七）鉴定意见与案件待证事实有无关联；

(8) Whether there is any contradiction between the authentication opinions and other evidence.

(八) 鉴定意见与其他证据之间有无矛盾;

(9) Other circumstances required to be cross-examined.

(九) 需要质证的其他情形。

**Article 102** A defense lawyer may apply to the court for requesting a person with specialized knowledge to appear in court to assist in cross-examination and provide opinions on the authentication opinions.

**第一百零二条** 辩护律师可以向法庭申请有专门知识的人出庭协助质证, 对鉴定意见提出意见。

**Article 103** The physical evidence shall be cross-examined mainly from the following respects:

**第一百零三条** 对物证, 应当重点从以下方面质证:

(1) Whether the physical evidence is the original object.

(一) 物证是否为原物;

(2) The relationship between the physical evidence and the facts to be proved.

(二) 物证与待证事实的关系;

(3) Whether the physical evidence and other evidence are mutually corroborated, and whether there is any contradiction.

(三) 物证与其他证据之间能否相互印证, 有无矛盾;

(4) Whether the source of the physical evidence, and procedures and methods of collection are legal.

(四) 物证的来源、收集程序、方式是否合法;

(5) Whether the physical evidence has been damaged or changed.

(五) 物证是否受到破坏或者改变;

(6) Whether the physical evidence is collected completely and comprehensively.

(六) 物证收集是否完整全面;



(7) Whether the photo, video or copy of the physical evidence may reflect the appearance and characteristics of the original object.

（七）物证的照片、录像、复制品是否能反映原物的外形和特征；

(8) Whether the physical evidence collected or detained from investigation, inspection or search is attached with a corresponding transcript list, whether the transcript list contains the signatures of the investigators, holders and witnesses, and whether the names, features, quantity, quality and other items of the articles have been clearly specified.

（八）勘验、检查、搜查、扣押的物证是否附有相关笔录清单，是否经侦查人员、持有人、见证人签名，物品的名称、特征、数量、质量等是否注明清楚；

(9) Other circumstances required to be cross-examined.

（九）需要质证的其他情形。

**Article 104** The documentary evidence shall be cross-examined mainly from the following respects:

**第一百零四条** 对于书证，应当重点从以下方面质证：

(1) Whether the documentary evidence is the original.

（一）书证是否为原件；

(2) Whether there is any sign of change or alteration in the documentary evidence.

（二）书证是否有更改或更改的迹象；

(3) The relationship between the documentary evidence and the facts to be proved.

（三）书证与待证事实的关系；

(4) Whether the documentary evidence and other evidence are mutually corroborated, and whether there is any contradiction.

（四）书证与其他证据之间能否相互印证，有无矛盾；

(5) Whether a duplicate and photocopy of the documentary evidence are verified to be consistent with the original or are authenticated or otherwise determined to be authentic.

（五）书证的副本、复制件是否与原件核对无误，或经鉴定为真实或者以其他方式确定为真实；

(6) Whether the source of the documentary evidence, and procedures and methods of collection are legal.

(六) 书证的来源、收集程序、方式是否合法;

(7) Whether the documentary evidence has been damaged or changed.

(七) 书证是否受到破坏或者改变;

(8) Whether the documentary evidence relevant to the facts of a case has been completely collected.

(八) 与案件事实有关联的书证是否全部收集;

(9) Whether the physical evidence collected from investigation, inspection or search is attached with corresponding transcript, and whether the transcript contains the signatures of the investigators, holders and witnesses.

(九) 勘验、检查、搜查提取的书证是否附有相关笔录, 是否经侦查人员、持有人、见证人签名;

(10) Other circumstances required to be cross-examined.

(十) 需要质证的其他情形。

**Article 105** The transcript of investigation and inspection shall be cross-examined mainly from the following respects:

**第一百零五条** 对勘验、检查笔录, 应当重点从以下方面质证:

(1) Whether investigation and inspection has been conducted according to the law, and whether the transcript has been developed according to the law and the requirements of the relevant provisions.

(一) 勘验、检查是否依法进行, 笔录的制作是否符合法律及有关规定的要求;

(2) Whether the contents of the investigation and inspection transcripts are comprehensive, detailed, accurate and regulated.

(二) 勘验、检查笔录的内容是否全面、详细、准确、规范;

(3) Whether the form and methods of fixing evidence are scientific and regulated.

(三) 固定证据的形式、方法是否科学、规范;

(4) Whether the reasons have been specified through supplementary investigation and inspection and whether there is contradiction.

(四) 补充勘验、检查是否说明理由，前后有无矛盾；

(5) Whether the contents recorded in the transcript of investigation and inspection and other evidence are corroborated and whether there is any contradiction.

(五) 勘验、检查笔录中记载的情况与其他证据能否印证，有无矛盾；

(6) Whether the investigator, inspector and witness have affixed signatures or seals to the transcript of investigation and inspection.

(六) 勘验、检查笔录是否经勘验、检查人员和见证人签名或盖章；

(7) Other circumstances required to be cross-examined.

(七) 需要质证的其他情形。

**Article 106** The identification transcript shall be cross-examined mainly from the following respects:

第一百零六条 对辨认笔录，应当重点从以下方面质证：

(1) Whether identification is conducted under the auspices of the investigators.

(一) 辨认是否在侦查人员主持下进行；

(2) Whether the identifier has seen the objects to be identified before identification or has inquired of the specific characteristics of the objects to be identified in a detailed manner.

(二) 辨认人有无在辨认前见到辨认对象或详细询问辨认对象的具体特征；

(3) Whether the identification activity has been conducted separately.

(三) 辨认活动是否单独进行；

(4) Whether the objects to be identified or the number of objects satisfy the requirements.

(四) 辨认对象或对象数量是否符合规定；

(5) Whether there is any imply or designation for the identifier.

(五) 有无给辨认人暗示或指认的情形；



(6) Whether there are any identification transcript developed according to the standards.

(六) 有无制作规范的辨认笔录;

(7) Other circumstances required to be cross-examined.

(七) 需要质证的其他情形。

**Article 107** The investigative experiment transcript shall be cross-examined mainly from the following respects:

**第一百零七条** 对侦查实验笔录, 应当重点从以下方面质证:

(1) Whether the process and methods of experiment and the development of the transcript comply with the relevant provisions.

(一) 实验的过程、方法、笔录的制作是否符合有关规定;

(2) Whether there is any significant difference between the conditions of the investigative experiment and the conditions at the time of the incident.

(二) 侦查实验的条件与事件发生时的条件有无明显差异;

(3) Whether there are any other circumstances affecting the scientific conclusion of the experiment.

(三) 是否存在影响实验科学结论的其他情形。

**Article 108** The audio-visual materials shall be cross-examined mainly from the following respects:

**第一百零八条** 对视听资料, 应当重点从以下方面质证:

(1) The formation, time, place and surrounding environment of the audio-visual materials.

(一) 视听资料的形成及时间、地点和周围的环境;

(2) Whether the sources and collection process of the audio-visual materials are legal, and whether the parties have been threatened or seduced and fall under other circumstances in violation of the law and relevant provisions during the process of making.

(二) 视听资料的来源及提取过程是否合法, 制作过程中当事人有无受到威胁、引诱等违反法律及有关规定的情形;

(3) Whether the audio-visual materials are the originals and whether the producer and the original audio-visual materials holder have affixed signature or seal thereto.

(三) 是否为原件，制作人、原视听资料持有人是否签字或盖章；

(4) Whether the contents and production process are authentic and complete, and whether the audio-visual materials have been forged, altered, edited, increased or decreased.

(四) 内容和制作过程是否真实、完整，有无伪造、变造、剪辑、增减等；

(5) The relationship between the contents and the facts to be proved.

(五) 内容与待证事实的关系；

(6) Whether the equipment playing the audio-visual materials affects the broadcasting effect.

(六) 播放视听资料的设备是否影响播放效果等；

(7) Where the audio-visual materials are duplicates, whether the reasons for inability to take the originals, the process of making the duplicates and the process of storing the originals have been affixed.

(七) 视听资料为复制件的，是否附有无法调取原件的原因、复制件制作过程和原件存放地点的说明；

(8) Other circumstances required to be cross-examined.

(八) 需要质证的其他情形。

**Article 109** The electronic evidence shall be cross-examined mainly from the following respects:

**第一百零九条** 对电子证据，应当重点从以下方面质证：

(1) Whether the original storage medium has been transferred with the case.

(一) 原始存储介质是否随案移送；

(2) Whether making, storing, transmitting, obtaining, collecting, producing and other procedures and links comply with the technical norms and are legal.

(二) 制作、储存、传递、获得、收集、出示等程序和环节是否符合技术规范、是否合法；

(3) Whether the contents are authentic, altered, forged, deleted, amended, increased or decreased.

(三) 内容是否真实、有无变造、伪造、删除、修改、增减等情形;

(4) Whether there is any connection between the electronic evidence and the facts of the case.

(四) 电子证据与案件事实有无关联;

(5) Whether the electronic data relevant to the facts of the case are collected comprehensively according to the law.

(五) 与案件事实有关的电子数据是否全面依法收集;

(6) Other circumstances required to be cross-examined.

(六) 需要质证的其他情形。

**Article 110** A defense lawyer having doubt about the investigation and inspection transcript, examination transcript, identification transcript, investigative experiment transcript, audio-visual materials and electronic evidence may apply to the people's court for notifying the investigator, inspector and other relevant personnel of testifying in court.

第一百一十条 对勘验、检查笔录、辨认笔录、侦查实验笔录、视听资料及电子证据有疑问的, 辩护律师可以申请人民法院通知勘验、检查等相关人员出庭作证。

**Article 111** Where a public prosecutor produces the evidence not submitted before the court session, the defense lawyer may apply for adjournment or trial postponement.

第一百一十一条 公诉人出示庭前未提交证据的, 辩护律师可以申请法庭休庭或延期审理。

**Article 112** When a court conducts an out-of-court investigation and notifies the prosecutor and defender of being present, the defense lawyer shall be present.

第一百一十二条 法庭进行庭外调查并通知控辩双方到场的, 辩护律师应当到场。



**Article 113** After a public prosecutor produces evidence, the defense lawyer shall have the right to produce evidence in court and may also apply to the court for notifying the witnesses of testifying in court. The evidence produced by a defense lawyer to the court may be the evidence collected by himself or herself according to the law or the evidence that has been transferred by the procuratorial authority to the court but has not been produced in court.

**Article 114** When producing evidence, a defense lawyer shall explain the name, contents and source of the evidence, and the facts to be proved to the court. For non-verbal evidence, the original copy and original object shall be produced, and reasons shall be explained if the original copy and original object are unable to be produced.

### Section 3 Participating in Court Debate

**Article 115** A defense lawyer shall, according to the court's investigation of the facts of a case, and the defense opinions of the public prosecutor and other litigation participants, and in consideration of the facts, evidence, procedures and application of law of the dispute focus of a case, fully present defense opinions.

**Article 116** A defense lawyer that has objection to the crime charged in the written indictment, or presents a defense of innocence or a defense that the criminal suspect should not be subject to criminal liability according to the law may present defense opinions from the following respects:

**第一百一十三条** 在公诉人举证完毕后,辩护律师有权向法庭举证,也可以申请法庭通知证人出庭作证。辩护律师向法庭出示的证据,可以是自行依法收集的证据,也可以是检察机关向法院移送但没有在法庭上出示的证据。

**第一百一十四条** 辩护律师举证时,应当向法庭说明证据的名称、内容、来源以及拟证明的事实。非言词证据应当出示原件、原物,不能出示原件、原物的应当说明理由。

### 第三节 参加法庭辩论

**第一百一十五条** 辩护律师应当根据法庭对案件事实调查的情况,针对公诉人及其他诉讼参与人发表的辩论意见,结合案件争议焦点事实、证据、程序及法律适用问题,充分发表辩论意见。

**第一百一十六条** 辩护律师对于起诉书指控犯罪持有异议,提出无罪辩护或者依法不应当追究刑事责任的辩护,可以从以下方面发表辩论意见:

(1) opinions that the defendant has no criminal facts;

（一）被告人没有犯罪事实的意见；

(2) opinions that the facts charged are unclear and the evidence is insufficient;

（二）指控的事实不清，证据不足的意见；

(3) opinions that the defendant's conduct alleged does not constitute a crime according to the law;

（三）指控被告人的行为依法不构成犯罪的意见；

(4) opinions that the defendant has not attained the statutory age for criminal liability;

（四）被告人未达到法定刑事责任年龄的意见；

(5) opinions that the defendant is a mental patient legally exempted from criminal liability; and

（五）被告人属于依法不负刑事责任的精神病人的意见；

(6) opinions that a person falls under the circumstances as prescribed in Article 15 of the Criminal Procedure Law and may not be subject to criminal liability: the circumstances of the alleged conduct are obviously minor and cause no serious harm, and the alleged conduct is therefore not deemed a crime; the time limitation for criminal prosecution has expired; exemption of criminal punishment has been granted in a special amnesty decree; the alleged crime is handled only upon a complaint in accordance with the Criminal Law, but there is no such a complaint or the complaint has been withdrawn; the criminal suspect or defendant dies; and the person is otherwise exempted by law from criminal liability.

（六）具有《刑事诉讼法》第十五条规定的情形，不应当追究刑事责任的意见：情节显著轻微、危害不大，不认为是犯罪的；犯罪已过追诉时效期限的；经特赦令免除刑罚的；依照刑法告诉才处理的犯罪，没有告诉或者撤回告诉的；犯罪嫌疑人、被告人死亡的；其他法律规定免于追究刑事责任的。

**Article 117** A defense lawyer that holds no objection to the crime charged in the written indictment may present opinions from the respect of sentencing, including presenting opinions on the sentencing recommendations offered by the procuratorial authority and the reasons therefor.

第一百一十七条 辩护律师对于起诉书指控的罪名不持异议，可以从量刑方面发表辩论意见，包括针对检察机关提出的量刑建议及其理由发表意见。

**Article 118** For a case in which a defense lawyer makes a defense of innocence, in court debate, a defense lawyer may firstly present defense opinions on conviction, and then present defense opinions on sentencing.

第一百一十八条 辩护律师做无罪辩护的案件，法庭辩论时，辩护律师可以先就定罪问题发表辩论意见，然后就量刑问题发表意见。

**Article 119** Where a defense lawyer believes that the crime charged in the written indictment is untenable, but the criminal fact charged constitutes another crime for which lenient sentence shall be given, with the prior consent of the defendant, the defense lawyer may present defense opinions of changing the crime.

第一百一十九条 辩护律师认为起诉书指控的犯罪罪名不成立，但指控的犯罪事实构成其他处罚较轻的罪名，在事先征得被告人同意的情况下，可以提出改变罪名的辩护意见。

**Article 120** A defense lawyer believing that there is illegal circumstances in the judicial proceeding of a case that affect the conviction and sentencing or there is illegally collected evidence to be excluded according to the law may present opinions in court debate.

第一百二十条 辩护律师认为案件诉讼程序存在违法情形对定罪量刑有影响或具有依法应当排除的非法证据，可以在法庭辩论时发表意见。

**Article 121** The evidence based on which a defense lawyer presents defense opinions and the laws applied shall be clear and accurate.

第一百二十一条 辩护律师发表辩护意见所依据的证据、引用的法律要清楚、准确。



**Article 122** A defense lawyer's defense opinions shall have clear points, focal points, sufficient argument, strong argumentation, rigorous logic, accurate wording and concise language.

第一百二十二条 辩护律师的辩护意见应当观点明确，重点突出，论据充分，论证有力，逻辑严谨，用词准确，语言简洁。

**Article 123** During the mutual debate with a public prosecutor, a defense lawyer shall focus on the public prosecutor's new problems and new points of view and present opinions in consideration of the dispute focus of the case.

第一百二十三条 辩护律师在与公诉人相互辩论中，重点针对控诉方的新问题、新观点，结合案件争议焦点发表意见。

**Article 124** Prior to the pronouncement of the judgment of the first instance, a defense lawyer finding any new or missing facts and evidence required to be verified may apply to resume the court investigation.

第一百二十四条 一审宣判前，辩护律师发现有新的或遗漏的事实、证据需要查证的，可以申请恢复法庭调查。

**Article 125** Where, in court session, the defendant refuses to defend or proposes to change a lawyer, the defense lawyer shall propose to adjourn the hearing of the case and appropriately handle the matter in consultation with the parties.

第一百二十五条 在法庭审理过程中，被告人当庭拒绝辩护或提出更换律师的，辩护律师应当建议休庭，与当事人协商妥善处理。

In the event of the course as prescribed in paragraph 2 of Article 12 of these Rules in court session, a defense lawyer may request the court to adjourn the hearing of the case and appropriately handle the matter in consultation with the parties.

在法庭审理过程中，出现本规范第十二条第二款事由的，辩护律师可以请求法庭休庭，与当事人协商妥善处理。

Section 4 Work after the Court Session

第四节 庭后工作

**Article 126** After an adjournment, a defense lawyer shall undergo the handover formalities with the court for the evidence to be produced and pronounced in court in a timely manner; and read the trial transcripts in a timely manner, request the clerk to make supplements or take corrective action, and affix signature thereto upon confirmation, if the defense lawyer deems that there is any omission or error.

**Article 127** After an adjournment, a defense lawyer shall review the written defense opinions as soon as possible and submit them to the court.

**Article 128** After the people's court pronounces the judgment, a defense lawyer shall receive the written judgment in a timely manner.

During the period of appeal, the defense lawyer of first instance and the lawyer intending to serve as the defense lawyer of trial on appeal may meet the defendant to hear his or her opinions on the written judgment and whether to appeal and offer suggestions.

## Chapter V Defense Work in Public Prosecution Cases of Second Instance

**Article 129** A defense lawyer that is retained by a defendant or the defendant's legal representative to serve as the defender of trial on appeal during the period of appeal shall assist the defendant in filing an appeal, including assisting in determining the request and cause of appeal, and preparing a written appeal on a commission basis, etc.

**第一百二十六条** 休庭后, 辩护律师应当就当庭出示、宣读的证据及时与法庭办理交接手续; 及时阅读庭审笔录, 认为记录有遗漏或差错的, 应当要求书记员补充或者改正, 确认无误后签名。

**第一百二十七条** 休庭后, 辩护律师应当尽快整理书面辩护意见, 提交法庭。

**第一百二十八条** 人民法院宣告判决后, 辩护律师应当及时收取判决书。

在上诉期间, 一审辩护律师、拟担任二审辩护人的律师可以会见被告人, 听取其对判决书的意见及是否上诉的意见并提出建议。

## 第五章 公诉二审案件的辩护工作

**第一百二十九条** 一审辩护律师在上诉期内受被告人、被告人的法定代理人的委托担任二审辩护人的, 应当协助被告人提出上诉, 包括协助确定上诉的请求和理由, 代写上诉状等。

A defense lawyer of first instance may, with the consent of the defendant, file an appeal during the statutory appeal period.

一审辩护律师经被告人同意，在法定上诉期内可以提出上诉。

A lawyer retained to serve as the defender of trial on appeal shall contact the people's court of trial on appeal in a timely manner, submit the authorization formalities, and participate in the legal proceedings of trial on appeal in a timely manner.

受委托担任二审辩护人的律师，应当及时与二审人民法院取得联系，提交委托手续，及时参与二审诉讼活动。

**Article 130** After the procedures of trial on appeal are launched, a defense lawyer shall go to the court to consult the case files in a timely manner, meet the appellant and defendant of original trial, and investigate and collect relevant evidence if necessary.

**第一百三十条** 二审程序启动后，辩护律师应当及时到法院查阅案卷材料，会见上诉人、原审被告，必要时调查收集相关证据材料。

**Article 131** After consulting the case files, meeting the interview, conducting investigation and collecting relevant evidence, where a case of trial on appeal falls under one of the following circumstances, a defense lawyer shall present the opinions of holding court session in writing to the people's court and specify the specific reasons:

**第一百三十一条** 经过阅卷、会见上诉人、调查收集相关证据材料，二审案件具有下列情形之一的，辩护律师应当以书面形式向人民法院提出开庭审理的意见并说明具体理由：

(1) The appellant or the legal representative of the appellant raises an objection to the facts and evidence identified in the first instance, which may affect the conviction and sentencing.

（一）上诉人、上诉人的法定代理人对一审认定的事实、证据提出异议，可能影响定罪量刑的；

(2) The defense lawyer believes that the facts and evidence identified in the first instance are erroneous, which may affect the conviction and sentencing.

（二）辩护律师认为一审认定的事实、证据存在错误，可能影响定罪量刑的；



(3) The people's procuratorate or appellant and his or her defense lawyer submits new evidence.

(三) 人民检察院或者上诉人及其辩护律师提交新证据的;

(4) Other circumstances under which court session shall be held,

(四) 其他应当开庭审理的情形。

**Article 132** For a case of trial on appeal that the people's court decides to hold court session, including a general appellate case, an appellate case in which the defendant is sentenced to death penalty, a case in which the people's procuratorate lodges protest and other cases in which the courts decide to hold court sessions, a defense lawyer shall effectively make relevant preparation before court session is held.

**第一百三十二条** 人民法院决定开庭审理的二审案件,包括一般上诉案件,被告人被判处死刑的上诉案件,人民检察院抗诉的案件以及其他法院决定开庭的案件。辩护律师应当在开庭前认真做好相关准备工作。

**Article 133** A defense lawyer that attends the court session of a case of trial on appeal shall, according to the cause leading to the procedures of trial on appeal, determine the defense ideas and priorities and conduct defense:

**第一百三十三条** 辩护律师出席二审案件开庭审理活动,应当根据引起二审程序的诉由确定辩护思路和重点,展开辩护:

(1) For an appellate case, a defense lawyer shall carry out defense activities mainly focusing on the facts, evidence and application of law involved in the appeal, and request the people's court of trial on appeal to revoke the original sentence and render a new sentence; if the facts are unclear or evidence is insufficient, a defense lawyer shall request the people's court of trial on appeal to remand the case to the original trial court for retrial; and for a case that has been remanded for retrial once, a defense lawyer shall directly request the people's court to acquit the defendant under the principle of "innocent until proved guilty."

(一) 对上诉案件,应当重点围绕上诉所涉及的事实、证据及法律适用问题展开辩护活动,请求二审人民法院撤销原判,进行改判;对于事实不清、证据不足的,可以请求二审人民法院发回原审法院重新审判;已经发回重审过一次的案件应当直接要求人民法院按疑罪从无原则宣告被告人无罪;

(2) For a case in which protest is lodged, a defense lawyer shall, according to the impact caused on the defendant of the original trial, determine the defense ideas and opinions. For a protest adverse to the defendant of the original trial, the original judgment shall be upheld and the people's court of trial on appeal shall be requested to dismiss the protest and uphold the original judgment; and for a protest in favor of the defendant of the original trial, the protest shall be supported, to expect that the people's court of trial on appeal reverses the original judgment and makes a modified judgment in favor of the defendant.

(3) For a case in which both appeal is filed and protest is lodged, a defense lawyer shall carry out defense activities by mainly focusing on the request and cause of appeal, and concurrently giving consideration to the request and cause of protest, and support the protest in favor of the appellant and defendant of the original trial or oppose the protest adverse to the appellant and defendant of the original trial respectively according to the different circumstances.

**Article 134** For a case of trial on appeal in which the people's court decides not to hold court session, the defense lawyer shall submit the written defense opinions to the people's court in a timely manner. If necessary, a request of presenting face-to-face defense opinions to the case-handling judge may be filed.

(二) 对抗诉案件, 应当根据抗诉对原审被告人产生的影响确定辩护思路和意见。对不利原审被告人的抗诉, 应当维护原审判决, 请求二审人民法院驳回抗诉, 维持原判; 对有利原审被告人的抗诉, 应当支持抗诉, 以期二审人民法院撤销原判, 作出对被告人有利的改判;

(三) 对既有上诉又有抗诉的案件, 应当重点围绕上诉请求和理由展开辩护活动, 同时兼顾抗诉请求和理由, 分别不同情况, 支持有利上诉人、原审被告人的抗诉, 反对不利上诉人、原审被告人的抗诉。

第一百三十四条 人民法院决定不开庭审理的二审案件, 辩护律师应当及时向人民法院提交书面辩护意见。必要时可以提出向办案法官当面陈述辩护意见的要求。

**Article 135** Under the procedures of trial on appeal, a defense lawyer finding that the trial of the people's court of first instance falls under one of the following circumstances in violation of the statutory judicial proceeding may, with consent of the appellant and the defendant of the original trial, present the opinions of reversing the original judgment and remanding the case for retrial to the people's court of trial on appeal:

(1) The provisions of the Criminal Procedure Law on public trial are violated.

(2) The system of disqualification is violated.

(3) The statutory procedural rights of the parties are deprived or restricted, which may affect the fair trial.

(4) The composition of the trial organization is illegal.

(5) Other violations of the statutory judicial proceeding may affect the fair trial.

Where the defendant disagrees to remand the case for retrial, the defense lawyer may present defense opinions.

## Chapter VI Representation in Litigation of Public Prosecution Cases

**Article 136** A lawyer may accept the authorization of the legal representative of a victim in a case of public prosecution, a close relative of a victim that has been dead, or a victim without capacity of civil conduct or with limited capacity for civil conduct to serve as the litigation representative of a criminal case.

**第一百三十五条** 在二审程序中，辩护律师发现一审人民法院的审理存在下列违反法定诉讼程序的情形之一，并且经上诉人、原审被告人同意，可以向二审人民法院提出撤销原判，发回重审的意见：

（一）违反《刑事诉讼法》有关公开审判的规定的；

（二）违反回避制度的；

（三）剥夺或限制当事人的法定诉讼权利，可能影响公正审判的；

（四）审判组织的组成不合法的；

（五）其他违反法定诉讼程序，可能影响公正审判的。

被告人不同意发回重审的，辩护律师可以发表辩护意见。

## 第六章 公诉案件的诉讼代理工作

**第一百三十六条** 律师可以接受公诉案件被害人、已死亡被害人的近亲属、无行为能力或限制行为能力被害人的法定代理人的委托，担任刑事案件的诉讼代理人。



A lawyer may serve as the litigation representative of the plaintiff or defendant of the case of civil action incidental to criminal proceeding.

律师可以担任刑事附带民事诉讼案件原告人或被告人的诉讼代理人。

**Article 137** After accepting authorization, a lawyer shall provide the client with legal consulting and other legal aid, and contact the court undertaking the case and submit the materials on the representation formalities in a timely manner.

**第一百三十七条** 律师接受委托后，应当向委托人提供法律咨询和其他法律帮助，及时与承办法院取得联系、提交委托手续。

**Article 138** A representing lawyer of a victim in a public prosecution case that receives a notice of appearance less than three days before the opening time may request the people's court to change the date of opening court session; shall appear in court as scheduled, if a notice of appearance is received within the statutory period; and may request the people's court to change the date of opening court session, if he or she is unable to appear in court for justified reasons.

**第一百三十八条** 公诉案件被害人的代理律师收到出庭通知距开庭时间不满三日的，可以要求人民法院更改开庭日期；如在法定期间内收到出庭通知的，应当按时出庭；如因正当理由不能出庭，可以要求人民法院更改开庭日期。

Where the people's court has decided to hold a court session without notifying the victim and his or her representing lawyer, the representing lawyer may request the people's court to notify the victim and his or her representing lawyer according to the law, to guarantee the rights of the victim and his or her representing lawyer to attend the court session in court.

人民法院已决定开庭而不通知被害人及其代理律师出庭的，代理律师可以要求人民法院依法通知，保证被害人及其代理律师出庭参加庭审的权利。

**Article 139** A representing lawyer may, before court session is held, consult the people's court about whether a case is to be tried in public. Where a case involves a victim's privacy or trade secrets, a representing lawyer shall request the people's court to hear the case in camera.

**第一百三十九条** 代理律师可以在开庭前向人民法院了解案件是否公开审理。如果案件涉及被害人隐私、商业秘密的，应当要求人民法院不公开审理。

**Article 140** A representing lawyer shall notify the victim of having the right to apply for disqualification of a member of the collegial bench, clerk, public prosecutor, authentication expert and interpreter, and assist the victim in exercising his or her rights.

**第一百四十条** 代理律师应当告知被害人有权对合议庭组成人员、书记员、公诉人、鉴定人和翻译人员申请回避，并协助被害人行使权利。

**Article 141** In court session, a representing lawyer shall legally direct or represent the client to exercise the following procedural rights, or assist the client in exercising the following procedural rights:

**第一百四十一条** 在法庭审理过程中，代理律师应当依法指导、协助或代理委托人行使以下诉讼权利：

(1) applying for convening or attending a pretrial conference;

（一）申请召集、参加庭前会议；

(2) stating the facts of the case;

（二）陈述案件事实；

(3) producing and pronouncing the relevant evidence;

（三）出示、宣读有关证据；

(4) requesting the court to notify the witnesses, authentication experts and producers of investigation and inspection transcripts that do not appear in court of testifying in court;

（四）请求法庭通知未到庭证人、鉴定人和勘验检查笔录制作人出庭作证；

(5) questioning the defendants, witnesses, authentication experts and producers of investigation and inspection transcripts, upon permission by the presiding judge;

（五）经审判长许可，向被告人、证人、鉴定人、勘验检查笔录制作人发问；

- (6) raising objections to the threatening and inducing questions that are put forward by the defendant and his or her defense lawyer, and that harm the personal dignity or are irrelevant to this case; (六) 对被告人及其辩护律师向被害人提出的威胁性、诱导性、有损人格或与本案无关的发问提出异议;
- (7) presenting cross-examination opinions against various pieces of evidence; (七) 对各项证据发表质证意见;
- (8) presenting defense opinions; (八) 发表辩论意见;
- (9) applying for notifying new witnesses of appearing in court, collecting and consulting new evidence, and conducting re-authentication or investigation; (九) 申请通知新的证人到庭、调取新的证据、申请重新鉴定或者勘验;
- (10) applying to the court for notifying a person with specialized knowledge to appear in court, to present opinions on the authentication opinions issued by the authentication expert; (十) 申请法庭通知有专门知识的人出庭, 就鉴定人作出的鉴定意见提出意见;
- (11) requesting the court to adjourn the trial if necessary; and (十一) 必要时, 请求法庭延期审理;
- (12) applying to the people's court for excluding illegally collected evidence according to the law. (十二) 申请人民法院对以非法方法收集的证据依法予以排除等。

**Article 142** In court session, a representing lawyer may debate with the defendant and his or her defense lawyer. Where the opinions of a representing lawyer are inconsistent with those of a public prosecutor, the representing lawyer shall, starting from the point of protecting the lawful rights and interests of the victim, independently present the representation opinions.

第一百四十二条 在法庭审理中, 代理律师可以与被告人及其辩护律师展开辩论。代理律师意见与公诉人意见不一致的, 代理律师应当从维护被害人的合法权益出发, 独立发表代理意见。



**Article 143** A representing lawyer believing that the procedural rights of a victim or representing lawyer have been infringed upon may, according to the relevant provisions of the Criminal Procedure Law, file a petition or accusation with the people's procuratorate.

**第一百四十三条** 代理律师认为被害人或代理律师的诉讼权利受到侵犯的，可以依据《刑事诉讼法》相关规定，向人民检察院提出申诉或者控告。

**Article 144** A representing lawyer shall notify the parties of verifying the trial transcripts, supplement the omissions or make amendments to the errors, and affix signatures thereto upon confirmation.

**第一百四十四条** 代理律师应当告知当事人核对庭审笔录，补充遗漏或修改差错，确认无误后签名。

A representing lawyer shall undergo the handover formalities with the court for the evidence to be produced and pronounced in court in a timely manner; and read the trial transcripts in a timely manner, request making supplements or taking corrective action, and affix signature thereto upon confirmation, if the representing lawyer deems that there is any omission or error.

代理律师应当就当庭出示、宣读的证据及时与法庭办理交接手续；及时阅读庭审笔录，认为记录有遗漏或差错的，可以请求补充或者改正，确认无误后应当签名。

**Article 145** After the people's court pronounces the judgment, a representing lawyer shall receive the written judgment in a timely manner.

**第一百四十五条** 人民法院宣告判决后，代理律师应当及时收取判决书。

Where a victim and his or her legal representative refuse to accept the judgment of first instance, the representing lawyer may assist the victim and his or her legal representative in requesting the people's procuratorate to file a protest or represent the people's procuratorate to file a protest within 5 days of the receipt of a written judgment.

被害人及其法定代理人不服一审判决的，代理律师可以协助或代理其在收到判决书后五日内，请求人民检察院抗诉。

**Article 146** After a public prosecution case enters the procedures of trial on appeal, a lawyer's representation work shall be carried out according to the relevant provisions of these Rules on first instance.

第一百四十六条 公诉案件进入二审程序后，律师的代理工作参照本规范一审相关规定进行。

## Chapter VII Representation and Defense Work in Cases of Private Prosecution

## 第七章 自诉案件的代理和辩护工作

### Section 1 Representation Work in Cases of Private Prosecution

### 第一节 自诉案件的代理工作

**Article 147** A lawyer may accept the representation of a private prosecutor and his or her legal representative to serve as the litigation representative thereof. Before accepting representation, a lawyer shall examine whether a case falls into the scope of statutory cases of private prosecution and meets the conditions of docketing.

第一百四十七条 律师可以接受自诉人及其法定代理人的委托，担任其诉讼代理人。接受委托前，律师应当审查案件是否符合法定自诉案件范围和立案条件。

**Article 148** A representing lawyer shall assist the private prosecutor in analyzing the case, determine the defendant and the court with jurisdiction, investigate and understand relevant facts and evidence, and develop the criminal complaint of private prosecution on a commission basis: A complaint of private prosecution shall include the following contents:

第一百四十八条 代理律师应当帮助自诉人分析案情，确定被告人和管辖法院，调查、了解有关事实和证据，代写刑事自诉状。自诉状应当包括以下内容：

(1) the name, age, ethnicity, native place, place of birth, educational level, occupation, employer, domicile and other natural conditions of the private prosecutor and defendant;

（一）自诉人和被告人的姓名、年龄、民族、籍贯、出生地、文化程度、职业、工作单位、住址等自然情况；

(2) the criminal facts of the defendant, including the time, place, means, harmful consequences, etc.;

（二）被告人的犯罪事实，包括时间、地点、手段、危害后果等；

(3) the crime committed by the defendant;

（三）被告人行为所触犯的罪名；

(4) the specific claims;

（四）具体的诉讼请求；

(5) the people's court to receive the complaint and the time of accusation;

（五）致送人民法院的名称和具状时间；

(6) the witness's name and address; and

（六）证人的姓名、住址；

(7) the name, pieces and sources, etc. of evidence.

（七）证据的名称、件数、来源等。

Where there are more than two defendants, copies of the complaints of private prosecution shall be provided according to the number of defendants.

被告人是两人以上的，应当按被告人的人数提供自诉状的副本。

**Article 149** Where a private prosecutor requests for civil compensation concurrently, a representing lawyer may assist him or her in developing a criminal complaint of incidental civil action, to specify the damages caused by the criminal act of the defendant, specific compensation claim and basis for calculation.

**第一百四十九条** 自诉人同时要求民事赔偿的，代理律师可以协助其制作刑事附带民事起诉状，写明被告人犯罪行为所造成的损害、具体赔偿请求及计算依据。

**Article 150** A lawyer accepting representation to file a private prosecution shall prepare for the following materials and documents:

**第一百五十条** 律师代理提起自诉时，应当准备下列材料和文件：

(1) the identification of the private prosecutor;

（一）自诉人身份证明文件；

(2) the criminal complaint of private prosecution;

（二）刑事自诉状；

(3) the evidentiary materials and catalogue;

（三）证据材料及目录；

(4) the power of attorney;

（四）委托书；



(5) the certificate of the law firm; and

(五) 律师事务所证明;

(6) the lawyer's practicing certificate, etc.

(六) 律师执业证书等。

Where a civil action incidental to criminal proceeding is filed concurrently, a criminal complaint of incidental civil action shall be submitted.

同时提起刑事附带民事诉讼的,应当提交刑事附带民事起诉状。

**Article 151** After the people's court examines a case of private prosecution and requests the private prosecutor to supplement evidence or withdraw private prosecution, the representing lawyer shall assist the private prosecutor in effectively supplementing evidence and negotiate with the private prosecutor on whether to withdraw the private prosecution.

第一百五十一条 人民法院对自诉案件进行审查后,要求自诉人补充证据或撤回自诉的,代理律师应当协助自诉人作好补充证据工作或与自诉人协商是否撤回自诉。

Where there are common infringers, but the private prosecutor only initiates a prosecution against some of the infringers, and where there are common infringers, but only some of the private prosecutors initiate prosecutions, a representing lawyer shall provide the private prosecutor with legal consulting and interpretation of the legal provisions, and notify him or her of the legal risks and consequences.

对于有共同侵害人,但自诉人只对部分侵害人起诉的,以及有共同被侵害人,只有部分自诉人提起诉讼的,应当向自诉人提供法律咨询、解释法律规定,告知法律风险及后果。

**Article 152** Where a ruling of rejecting or dismissing the action rendered by the people's court is refused to be accepted, a representing lawyer shall assist the private prosecutor in filing an appeal.

第一百五十二条 对于人民法院作出的不予受理或者驳回起诉的裁定不服的,协助自诉人提起上诉。

**Article 153** Before the people's court decides to hold a court session, a representing lawyer shall effectively make pre-trial preparations. For the evidence that cannot be obtained, a representing lawyer shall apply to the people's court for conducting investigation and collecting evidence according to the law.

第一百五十三条 人民法院决定开庭前，代理律师应当作好开庭前准备工作。对于无法取得的证据，可以申请人民法院依法调查取证。

**Article 154** In a criminal case of private prosecution in which a defendant files a counterclaim, a representing lawyer may accept representation of the defendant of counterclaim, and concurrently serve as his or her defense lawyer.

第一百五十四条 刑事自诉案件，被告人提起反诉的，代理律师可以接受反诉被告人的委托，可以同时担任其辩护律师。

**Article 155** A representing lawyer shall notify the private prosecutor of the legal provisions on holding court sessions for a case of private prosecution, to prevent the legal consequences that the people's court handles it as a case in which litigation is automatically revoked, as the private prosecutor refuses to appear in court or leaves the courtroom during a court session without permission. Where the private prosecutor does not appear in court, the representing lawyer shall still appear in court as scheduled to fulfill the functions.

第一百五十五条 代理律师应当向自诉人告知有关自诉案件开庭的法律规定，避免因自诉人拒不到庭或擅自中途退庭导致人民法院按自动撤诉处理的法律后果。自诉人不到庭的，代理律师仍应按时出庭履行职责。

**Article 156** When a court session is held for a case of private prosecution, the representing lawyer shall assist the private prosecutor in fully exercising the functions of filing a complaint and use the evidence to prove that the private prosecutor's charges are tenable.

第一百五十六条 自诉案件开庭审理时，代理律师应当协助自诉人充分行使控诉职能，运用证据证明自诉人的指控成立。

**Article 157** Where the summary procedures may be applicable to a case of private prosecution according to the law, a representing lawyer may represent the private prosecutor to request the people's court to apply the summary procedures. Where the summary procedures may not be applicable to a case of private prosecution according to the law, a representing lawyer may represent the private prosecutor to raise an objection to the decision of the people's court for applying the summary procedures.

第一百五十七条 自诉案件依法可以适用简易程序的，代理律师可以代理自诉人要求人民法院适用简易程序。自诉案件依法不当适用简易程序的，代理律师可以代理自诉人对于法院适用简易程序的决定提出异议。

**Article 158** After the court debate for a case of private prosecution ends, the representing lawyer may, according to the authorization of the client, participate in the court mediation.

第一百五十八条 自诉案件法庭辩论结束后，代理律师可以根据委托人授权参加法庭调解。

**Article 159** A representing lawyer shall assist the private prosecutor in deciding whether to settle with the defendant or withdraw the private prosecution before the court pronounces the judgment.

第一百五十九条 代理律师应当协助自诉人在法院宣告判决前决定是否与被告人和解或者撤回自诉。

## Section 2 Defense Work in Cases of Private Prosecution

## 第二节 自诉案件的辩护工作

**Article 160** A lawyer may accept representation of a defendant in a case of private prosecution and his or her legal representative or close relative to serve as the defense lawyer of the defendant.

第一百六十条 律师可以接受自诉案件被告人及其法定代理人或者近亲属的委托担任被告人的辩护律师。

**Article 161** A defense lawyer serving as the defense lawyer of a defendant in a case of private prosecution shall be governed by the work rules on defense lawyers in public prosecution cases and pay attention to the following matters:

第一百六十一条 担任自诉案件被告人的辩护律师，应当适用公诉案件辩护律师的工作规范，并注意以下事项：



(1) A defendant in a case of private prosecution shall have the right to file a counterclaim.

（一）自诉案件被告人有权提起反诉；

(2) Where a private prosecutor refuses to appear in court without justifiable reasons after having been legally summoned twice or leaves the courtroom during a court session without the permission of the court, the case shall be deemed withdrawn by the private prosecutor.

（二）自诉人经两次合法传唤无正当理由不到庭或者未经法庭许可中途退庭的，按撤诉处理；

(3) A case of private prosecution may be mediated.

（三）自诉案件可以调解；

(4) A private prosecutor may conciliate in a private way with the defendant or withdraw the private prosecution.

（四）自诉人可以同被告人自行和解，或者撤回自诉。

**Article 162** A defense lawyer shall meet a defendant in a case of private prosecution in custody and apply for changing the compulsory measures therefor.

**第一百六十二条** 对于被羁押的自诉案件被告人，辩护律师应当会见，并为其申请变更强制措施。

## Chapter VIII Representation Work in Civil Actions Incidental to Criminal Proceedings

## 第八章 刑事附带民事诉讼的代理工作

### Section 1 Representation Work for Plaintiffs in Civil Actions Incidental to Criminal Proceedings

### 第一节 刑事附带民事诉讼原告人的代理工作

**Article 163** A lawyer may accept representation of a plaintiff in a civil action incidental to criminal proceeding meeting the statutory conditions to serve as the litigation representative in a civil action incidental to criminal proceeding to participate in some trial activities incidental to criminal proceedings, during the procedures of first instance and trial on appeal. The representation power shall be specified when undergoing the representation formalities.

**第一百六十三条** 律师可以接受符合法定条件的刑事附带民事诉讼原告人的委托，在一审、二审程序中，担任刑事附带民事诉讼的诉讼代理人参与附带民事部分的审判活动。在办理委托手续时应当明确代理权限。

**Article 164** When accepting representation, a lawyer shall examine whether the following matters that may be tried as civil actions incidental to criminal proceedings exist:

(1) Whether criminal proceeding as the prerequisite for the civil action incidental to criminal proceeding exists.

(2) Whether a defendant in a civil action incidental to criminal proceeding meets the statutory conditions.

(3) Whether there is a causal relationship between the victim's material losses and the defendant's act.

(4) Whether a civil action incidental to criminal proceeding is filed after a criminal case is docketed and before the judgment of first instance is pronounced.

(5) Whether it falls into the statutory scope of civil actions incidental to criminal proceedings.

**Article 165** After accepting representation, a lawyer shall represent the client to prepare a criminal complaint of incidental civil action, including the following contents:

(1) the basic information on the plaintiff and defendant in a civil action incidental to criminal proceeding;

(2) the specific claims;

(3) the facts and causes;

第一百六十四条 律师接受委托时，应当审查下列可以作为附带民事诉讼审理的事项是否存在：

（一）作为刑事附带民事诉讼前提的刑事诉讼是否存在；

（二）刑事附带民事诉讼的被告人是否符合法定条件；

（三）被害人的物质损失是否与被告人的行为存在因果关系；

（四）刑事附带民事诉讼提起的时间是否在刑事案件立案之后第一审判决宣告之前；

（五）是否符合法定的刑事附带民事诉讼的范围。

第一百六十五条 律师接受委托后，应当代理委托人撰写附带民事起诉状，内容包括：

（一）刑事附带民事诉讼原告人、被告人的基本情况；

（二）具体诉讼请求；

（三）事实和理由；

(4) the people's court to receive the complaint and the time of accusation; and

(四) 致送人民法院的名称和具状时间;

(5) relevant evidentiary materials, etc.

(五) 相关的证据材料等。

**Article 166** For a civil action incidental to criminal proceeding decided by the people's court not to be docketed, a lawyer may suggest that the client should separately institute a civil lawsuit, requesting the case handling authority to conduct recovery or take other remedial measures.

**第一百六十六条** 对人民法院决定不予立案的刑事附带民事诉讼, 可以建议委托人另行提起民事诉讼, 要求办案机关追缴或采取其他救济措施。

**Article 167** A representing lawyer may, according to the case situation, legally collect evidence on its own or assist the client in legally collecting evidence, conduct investigation, and apply for authentication.

**第一百六十七条** 代理律师根据案件情况, 可以自行或协助委托人依法收集证据, 展开调查, 申请鉴定。

**Article 168** When instituting a civil action incidental to criminal proceeding, a representing lawyer may suggest that the client should apply to the people's court for taking seizure, detainment, or freezing and other preservation measures against the property of the defendant or assist the client in applying to the people's court for taking seizure, detainment, or freezing and other preservation measures against the property of the defendant.

**第一百六十八条** 在提起刑事附带民事诉讼时, 代理律师可以建议或协助委托人申请人民法院对被告人的财产采取查封、扣押或冻结等保全措施。

**Article 169** A lawyer serving as a litigation representative of a party in a civil action incidental to criminal proceeding shall notify the client of the following statutory matters that may lead to handling of the case as automatic withdrawal:

**第一百六十九条** 律师担任刑事附带民事诉讼当事人的诉讼代理人, 应当告知委托人可能导致按自动撤诉处理的下列法定事项:



(1) A plaintiff of the civil action incidental to criminal proceeding refuses to appear in court without justifiable reasons after having been legally summoned twice.

(一) 刑事附带民事诉讼原告人经人民法院两次传唤无正当理由拒不到庭的;

(2) A plaintiff of the civil action incidental to criminal proceeding leaves the courtroom during a court session without the permission of the court.

(二) 刑事附带民事诉讼原告人未经法庭许可中途退庭的。

**Article 170** A representing lawyer may, in court session, carry out the following work according to the case situation:

**第一百七十条** 代理律师在庭审过程中, 可以根据案件情况从事下列工作:

(1) applying for disqualification of the members of the collegial bench in the case, clerk, public prosecutor, authentication experts and interpreter upon authorization of the client;

(一) 经委托人授权可以对本案合议庭组成人员、书记员、公诉人、鉴定人和翻译人员提出回避申请;

(2) stating the facts of the case;

(二) 陈述案件事实;

(3) producing and reading the evidence of the party;

(三) 出示、宣读本方证据;

(4) applying to the court for notifying the witnesses of this party of testifying in court;

(四) 申请法庭通知本方证人出庭作证;

(5) questioning the defendants, witnesses and authentication experts upon permission by the presiding judge;

(五) 经审判长许可对被告人、证人、鉴定人发问;

(6) presenting cross-examination opinions against the evidence of the defendant of a civil action incidental to criminal proceeding;

(六) 对刑事附带民事诉讼被告方的证据提出质证意见;

(7) raising objections to the improper questioning of the defendant of civil action incidental to criminal proceeding;

(七) 对刑事附带民事诉讼被告方的不当发问提出异议;

(8) presenting the representation opinions; and

(八) 发表代理意见;

(9) reconciling with the defendant, upon authorization of the client.

(九) 经委托人授权, 可以与被告方和解等。

**Article 171** Where a client participates in the litigation, a representing lawyer shall direct the client to participate in the mediation and prepare for the mediation plan.

第一百七十一条 委托人参加诉讼的, 代理律师应当指导委托人参加调解, 准备调解方案。

**Article 172** Where a plaintiff refuses to accept the part of civil action incidental to criminal proceeding in the judgment and ruling of first instance, the representing lawyer shall, according to representation, assist the plaintiff in filing an appeal.

第一百七十二条 原告人对于一审判决、裁定中刑事附带民事诉讼部分不服的, 代理律师应当根据委托协助其提起上诉。

## Section 2 Representation Work for Defendants in Civil Actions Incidental to Criminal Proceedings

## 第二节 刑事附带民事诉讼被告人的代理工作

**Article 173** A lawyer may accept representation of a defendant in a civil action incidental to criminal proceeding and his or her legal representative or close relative to serve as the litigation representative during the procedures of first instance and trial on appeal. The representation power shall be specified when undergoing the representation formalities.

第一百七十三条 律师可以接受刑事附带民事诉讼的被告人及其法定代理人或者近亲属的委托, 在一审、二审程序中, 担任诉讼代理人。在办理委托手续时应当明确代理权限。

Where the defendant of a civil action incidental to criminal proceeding is a legal person or another organization, a representing lawyer shall, besides producing the lawyer's practicing certificate to the court and submitting the certificate and power of attorney issued by the law firm, submit the photocopies of the identification of the legal representative and other persons in charge of the entity, business license and other documents proving the existence of the entity.

刑事附带民事诉讼被告人是法人或其他组织的，代理律师除向法院出示律师执业证书，提交律师事务所证明、委托书外，还需提交法定代表人身份证明等单位负责人身份证明、营业执照等证明单位存续的文书复印件。

**Article 174** A defense lawyer of a defendant in a criminal proceeding may accept representation to concurrently serve as the litigation representative of the defendant in a civil action incidental to criminal proceeding, but shall separately undergo the formalities of representation.

**第一百七十四条** 刑事被告人的辩护律师可以接受委托，同时担任刑事附带民事诉讼被告人的诉讼代理人，但应当另行办理委托手续。

**Article 175** A representing lawyer may, according to the case situation, conduct investigation and obtain evidence, and apply for authentication; shall develop a written statement of defense, participate in the court session, produce evidence and conduct cross-examination, hold debate, and present representation opinions; and shall, with the consent of the defendant, file a counterclaim and reconcile with the other party.

**第一百七十五条** 代理律师根据案件情况，可以进行调查取证、申请鉴定；应当撰写答辩状，参加庭审，举证质证，进行辩论，发表代理意见；经被告人同意，提出反诉以及与对方和解。

**Article 176** Where a plaintiff in a civil action incidental to criminal proceeding refuses to accept the part of civil action incidental to criminal proceeding in the judgment of first instance, the representing lawyer shall, according to representation, assist the defendant in filing an appeal.

**第一百七十六条** 刑事附带民事诉讼被告人对于一审判决刑事附带民事诉讼部分不服的，代理律师根据委托可以协助其提起上诉。

Chapter IX Defense Work in Summary Procedures

第九章 简易程序中的辩护工作



**Article 177** A lawyer may accept representation of a party and his or her close relative or legal representative, to serve as the defender and participate in the case tried by the people's court under the summary procedures.

第一百七十七条 律师可以接受当事人、近亲属或其法定代理人的委托，担任辩护人，参与人民法院适用简易程序审理的案件。

**Article 178** A defense lawyer shall explain to the defendant the legal provisions and legal consequences on the application of the summary procedures in a timely manner.

第一百七十八条 辩护律师应当及时向被告人释明关于适用简易程序的法律规定及法律后果。

**Article 179** A defense lawyer shall, according to the provisions of Article 208 of the Criminal Procedure Law, examine whether the application of the summary procedures complies with the law. A defense lawyer believing that the summary procedures should not be applied shall raise an objection in a timely manner and request the people's court to apply the normal procedures according to the law.

第一百七十九条 辩护律师应当依据《刑事诉讼法》第二百零八条的规定，审查适用简易程序是否符合法律规定。认为不应当适用简易程序的，应当及时提出异议，请求人民法院依法适用普通程序。

**Article 180** A defense lawyer handling a case to be tried under the summary procedures and finding the following circumstances during the period of trial shall suggest that the court should try the case under normal procedures:

第一百八十条 辩护律师办理适用简易程序审理的案件，在审判期间发现以下情形时，应当建议法庭转为普通程序审理：

(1) The defendant has objection to the application of the summary procedures.

（一）被告人对适用简易程序有异议的；

(2) The defendant's act may not constitute a crime.

（二）被告人的行为可能不构成犯罪的；

(3) The case facts are unclear and the evidence is inadequate.

（三）案件事实不清、证据不足的；

(4) The defendant may not assume criminal liability.

（四）被告人可能不负刑事责任的；

(5) The defendant is blind, deaf or dumb or a mental patient that has not yet completely lost his or her capacity of identifying or controlling his or her act.

（五）被告人是盲、聋、哑人，或者是尚未完全丧失辨认或者控制自己行为能力的精神病人的；

(6) The defendant denies the criminal facts charged in the written indictment in court.

（六）被告人当庭对起诉书指控的犯罪事实予以否认的；

(7) Some defendants in a joint criminal case do not plead guilty.

（七）共同犯罪案件中部分被告人不认罪的；

(8) There is significant social impact.

（八）有重大社会影响的；

(9) Other circumstances under which summary procedures may not be applied.

（九）其他不应当适用简易程序的。

**Article 181** For a public prosecution case to be tried under the summary procedures, a defense lawyer may cross-examine the evidence to which he or she has objection; and may, with permission of the judicial officers, debate with the public prosecutor and litigation representative.

**第一百八十一条** 适用简易程序审理的公诉案件，辩护律师可以对有异议的证据进行质证；经审判人员许可，辩护律师可以同公诉人、诉讼代理人互相辩论。

Chapter X Defense Work in the System of Lenient Punishments on Those Admitting Guilt and Accepting Punishment

第十章 认罪认罚从宽制度中的辩护工作

**Article 182** For a case in which the criminal fast-track sentencing procedures apply, a defense lawyer shall, within 3 working days of the date of accepting representation or designation, meet the criminal suspect or defendant; and during the period of examination for prosecution and trial, a defense lawyer shall, within 3 working days of the date of accepting representation or designation, complete consultation of the case files.

**Article 183** A defense lawyer believing that a case meets the conditions for applying the criminal fast-track sentencing procedures may, with consent of the criminal suspect, proactively suggest that the people's procuratorate should handle the case under the criminal fast-track sentencing procedures.

**Article 184** When meeting a criminal suspect or defendant, a defense lawyer shall explain in detail the contents and requirements of the criminal fast-track sentencing procedures to the criminal suspect or defendant, and notify him or her of the consequences of his or her procedural rights and substantial interests brought about by selection of the criminal fast-track sentencing procedures, including acknowledging the accused criminal facts, agreeing with the sentence proposed by the people's procuratorate, signing a recognizance, simplifying the written indictment, trial of a case by a sole judge, conducting no court investigation or court debate in court session, shortening time limits for trial, service, etc., and the defendant's rights to make final statements in court session, among others.

**第一百八十二条** 适用刑事速裁程序的案件，辩护律师应当在接受委托或指派之日起三个工作日内会见犯罪嫌疑人、被告人；审查起诉、审判期间，辩护律师应当在接受委托或指派之日起三个工作日内完成阅卷。

**第一百八十三条** 辩护律师认为案件符合刑事速裁适用条件时，经犯罪嫌疑人同意，可以主动建议人民检察院按刑事速裁程序办理。

**第一百八十四条** 辩护律师在会见犯罪嫌疑人、被告人时，应当向犯罪嫌疑人、被告人详细解释刑事速裁程序的内容和要求，告知选择刑事速裁程序对其诉讼权利及实体权益带来的后果，包括承认指控的犯罪事实、同意人民检察院的量刑建议、签署具结书、起诉书简化、由审判员一人独任审判、开庭时不进行法庭调查和法庭辩论、审理期限及送达期限等缩短、开庭时被告人有最后陈述的权利等。



A defense lawyer shall comprehensively understand the free will of the criminal suspect or defendant, to ensure that the criminal suspect or defendant authentically and voluntarily pleads guilty.

辩护律师应当全面了解犯罪嫌疑人、被告人的意愿，确保其真实、自愿认罪。

**Article 185** When the criminal suspect or defendant voluntarily pleads guilty and agrees with applying the criminal fast-track sentencing procedures, and the defense lawyer also agrees with applying the criminal fast-track sentencing procedures upon comprehensive examination, the defense lawyer shall no longer conduct defense of innocence.

**第一百八十五条** 犯罪嫌疑人、被告人自愿认罪，同意适用刑事速裁程序，且辩护律师经全面审查后也同意适用刑事速裁程序时，辩护律师则不再做无罪辩护。

A defense lawyer believing that a criminal suspect or defendant is innocent or that a criminal suspect or defendant pleads guilty for illegal means such as threat, solicitation, deception or torture shall raise an objection to the criminal fast-track sentencing procedures, and submit written opinions and relevant evidentiary materials.

辩护律师认为犯罪嫌疑人、被告人无罪或犯罪嫌疑人、被告人认罪是因受威胁、引诱、欺骗或刑讯逼供等非法方式形成时，应当对刑事速裁程序提出异议，提交书面意见和相关的证据材料。

**Article 186** A defense lawyer finding that a case is unsuitable for applying the fast-track sentencing procedures shall request the case handling authority to change the procedures in a timely manner.

**第一百八十六条** 辩护律师发现案件有不宜适用速裁程序情形的，应当及时向办案机关提出，要求变更程序。

**Article 187** When handling a case to which the criminal fast-track sentencing procedures apply, a defense lawyer shall actively apply for release on bail and residential surveillance for the criminal suspect or defendant, participate in the process of a criminal suspect's signing of a recognizance, and participate in the reconciliation process with the victim and his or her relatives.

**第一百八十七条** 辩护律师办理适用刑事速裁程序案件时，应当积极为犯罪嫌疑人、被告人申请取保候审、监视居住，参与犯罪嫌疑人签署具结书的过程，参与同被害人及其亲属的和解过程。

**Article 188** During the period of examination for prosecution, a defense lawyer shall, after fully communicating with the criminal suspect or defendant, present sentencing opinions to the procuratorial authority, with the consent of the criminal suspect or defendant.

At the trial stage, a defense lawyer may present defense opinions mainly focusing on the sentencing issue.

**Article 189** A defense lawyer shall specifically introduce the system for imposing lenient punishments on those confessing to their crimes and accepting judgments to the criminal suspect or defendant, mainly including the following contents:

(1) A criminal suspect or defendant to which the system for imposing lenient punishments on those confessing to their crimes and accepting judgments applies shall voluntarily plead guilty, agree with the accused criminal facts and sentencing suggestion, and sign a recognizance.

(2) The system for imposing lenient punishments on those confessing to their crimes and accepting punishments shall apply to the criminal fast-track sentencing procedures, summary procedures and normal procedures.

(3) A criminal suspect or defendant has the optional right of procedure, corresponding legal rights of choosing different procedures and consequences.

(4) A criminal suspect or defendant has the defense rights and other procedural rights according to the law and has the right to obtain effective legal assistance.

第一百八十八条 在审查起诉期间，辩护律师在与犯罪嫌疑人、被告人充分沟通后，经犯罪嫌疑人、被告人同意，可以向检察机关提出量刑意见。

在审判阶段，辩护律师可以主要围绕量刑问题发表辩护意见。

第一百八十九条 辩护律师应当向犯罪嫌疑人、被告人具体介绍认罪认罚从宽制度，重点包括以下内容：

（一）适用认罪认罚从宽制度犯罪嫌疑人、被告人必须自愿认罪，同意被指控的犯罪事实和量刑建议，签署具结书；

（二）认罪认罚从宽制度适用于刑事速裁程序、简易程序及普通程序；

（三）犯罪嫌疑人、被告人有程序选择权及选择不同程序相应的法律权利及后果；

（四）犯罪嫌疑人、被告人依法享有辩护权和其他诉讼权利，有权获得有效法律帮助；

(5) Where a criminal suspect voluntarily and faithfully confesses to the suspected criminal facts or has a major meritorious service, or the case involves major national interests, after reporting to the Ministry of Public Security level by level for submitting a request to the Supreme People's Procuratorate for approval, the investigation authority may withdraw the case; and during the period of examination for prosecution, after reporting to the Supreme People's Procuratorate for approval, the people's procuratorate may make a decision of non-prosecution.

(五) 犯罪嫌疑人自愿如实供述涉嫌犯罪的事实, 有重大立功或者案件涉及国家重大利益的, 经层报公安部提请最高人民检察院批准, 侦查机关可以撤销案件; 在审查起诉期间, 报经最高人民检察院批准, 人民检察院可以作出不起訴决定;

(6) Circumstances under which the system for imposing lenient punishments on those confessing to their crimes and accepting punishments may not apply as prescribed by law.

(六) 法律规定不适用认罪认罚从宽制度的情形。

**Article 190** For a case which the system for imposing lenient punishments on those confessing to their crimes and accepting punishments applies, a defense lawyer shall comprehensively consult case files, understand the case, diligently examine whether the accused facts of the criminal suspect or defendant constitute a crime, whether the criminal suspect or defendant confesses to his crimes and accepts punishments voluntarily, and whether evidence is collected by violence, threat, induction and other illegal means, and provide legal consulting and suggestions for the criminal suspect or defendant in a timely manner.

**第一百九十条** 适用认罪认罚从宽制度的案件, 辩护律师应当全面阅卷, 了解案情, 认真审核犯罪嫌疑人、被告人被指控的事实是否构成犯罪以及犯罪嫌疑人、被告人认罪认罚是否出于自愿, 有无受到暴力、威胁、引诱等非法取证等情况, 及时为犯罪嫌疑人、被告人提供法律咨询和建议。



**Article 191** During the process of investigation, a defense lawyer may discuss with the investigation authority on the issue that the criminal suspect pleads guilty and accepts punishment. Where a criminal suspect voluntarily pleads guilty and accepts punishment, the defense lawyer shall notify the investigation authority in a timely manner. A defense lawyer shall remind the investigation authority of specifying in the written opinions on transfer for examination for prosecution that the criminal suspect voluntarily pleads guilty and accepts punishment.

**Article 192** During the process of examination for prosecution, a defense lawyer shall actively participate in the negotiations between the criminal suspect and the procuratorial authority on pleading guilty and accepting punishment, selection of the judicial proceeding, sentencing suggestion, signing of a recognizance and other activities, remind the investigation authority of specifying in the written indictment that the criminal suspect pleads guilty and accepts punishment and the sentencing suggestion, and transfer the recognizance and other relevant materials.

**Article 193** During the period of trial, a defense lawyer shall mainly carry out the following defense work:

(1) A defense lawyer shall verify the voluntariness of the defendant for pleading guilty and accepting punishment and the legitimacy of the recognizance for pleading guilty and accepting punishment, and present the opinions to the people's court.

**第一百九十一条** 在侦查过程中，辩护律师可以与侦查机关商讨犯罪嫌疑人认罪认罚问题。犯罪嫌疑人自愿认罪认罚的，辩护律师应当及时告知侦查机关。辩护律师应当提示侦查机关在移送审查起诉意见书中写明犯罪嫌疑人自愿认罪认罚的情况。

**第一百九十二条** 在审查起诉过程中，辩护律师应当积极参与与犯罪嫌疑人与检察机关的认罪认罚协商、诉讼程序的选择、量刑建议以及具结书的签署等活动，提示检察机关在起诉书中写明被告人认罪认罚的情况、量刑建议，并移送具结书等相关材料。

**第一百九十三条** 在审判期间，辩护律师应当重点开展以下辩护工作：

（一）核实被告人认罪认罚的自愿性和认罪认罚具结书的合法性，并向人民法院提出意见；

(2) A defense lawyer shall examine whether the case should be tried under the fast-track sentencing procedures or summary procedures according to the law, and present opinions; and apply to the people's court for changing the procedures in a timely manner, where a case may not be tried under the fast-track sentencing procedures or summary procedures.

(二) 审核案件是否依法应当适用速裁程序或简易程序，并提出意见；对于不应当适用速裁程序或简易程序审理的，应及时向人民法院提出变更程序；

(3) A defense lawyer shall offer the sentencing suggestion to the people's court, or present agreeing or disagreeing opinions on the sentencing suggestion of the people's procuratorate, to strive for mitigated and lighter punishment for the defendant at maximum, including the principal punishment and accessory punishment.

(三) 向人民法院提出量刑建议或者对人民检察院的量刑建议发表同意或不同意的意见，最大限度地为被告人争取减轻、从轻处罚，包括主刑和附加刑；

(4) A defense lawyer shall participate in the defense work of second instance.

(四) 参加二审辩护工作。

**Article 194** When handling a case in which the defendant pleads guilty and accepts punishment, a defense lawyer finding extortion of confession by torture, collection of evidence by violence, bending law for personal gains and other circumstances shall notify the case handling authority of terminating the procedures of pleading guilty and accepting punishment in a timely manner.

**第一百九十四条** 在办理认罪认罚案件中，辩护律师如发现存在刑讯逼供、暴力取证或者徇私枉法等情况的，应当及时告知办案机关，终止认罪认罚程序。

**Article 195** In a case in which the defendant pleads guilty and accepts punishment, a defense lawyer shall pay special attention to the defense work on compulsory measures. During the period of investigation, examination for prosecution and trial, a defense lawyer shall actively present the opinions that the criminal suspect or defendant has no social danger and should be permitted to be subject to release on bail or residential surveillance.

**Article 196** When handling a case in which the system for imposing lenient punishments on those confessing to their crimes and accepting punishments applies, a defense lawyer shall actively offer suggestions for and participate in the reconciliation and negotiations with the victim and his or her families, to seek forgiveness of the victim.

**Article 197** When handling a case in which the system for imposing lenient punishments on those confessing to their crimes and accepting punishments applies, a defense lawyer shall pay attention to the criminal suspect's or defendant's property seized, impounded or frozen. Where the seizure, impoundment, and freezing measures are inappropriate, a defense lawyer shall propose to the case handling authority and request taking corrective action.

**Article 198** Where a criminal suspect or defendant regrets after pleading guilty and accepting punishment, a defense lawyer shall understand the situation and notify the case handling authority in a timely manner.

Chapter XI Defense Work in Death Penalty Review Cases

**第一百九十五条** 在认罪认罚案件中，辩护律师应当特别重视关于强制措施的辩护工作。在侦查期间、审查起诉期间、审判期间，均应当积极提出犯罪嫌疑人、被告人没有社会危险性，应当准予取保候审或者监视居住的意见。

**第一百九十六条** 在办理认罪认罚从宽制度的案件中，辩护律师应当积极建议和参与同被害人及其家属的和解协商，争取被害人方面的谅解。

**第一百九十七条** 在办理认罪认罚从宽制度的案件中，辩护律师应当关注犯罪嫌疑人、被告人财产被查封、扣押、冻结的情况。对于查封、扣押、冻结措施不当的，应当及时向办案机关提出，要求纠正。

**第一百九十八条** 犯罪嫌疑人、被告人认罪认罚后又表示反悔的，辩护律师应当及时了解情况并告知办案机关。

第十一章 死刑复核案件的辩护工作



**Article 199** A lawyer may accept representation of a party to a case and his or her close relative and designation of the legal aid agency to serve as the defender of the defendant in a case of death sentence with immediate execution and a case of death sentence with a suspension of execution.

**Article 200** A defense lawyer handling a death penalty review case may meet the close relatives of the defendant and other people to understand the case situation, request the close relatives of the defendant to provide the relevant case materials, copy the case materials in the people's court, and request the original representing lawyer to provide the case materials, and the original representing lawyer shall provide work convenience and necessary assistance.

**Article 201** A defense lawyer handling a death penalty review case shall respectively carry out work according to the following circumstances:

(1) In a case of first instance in which the defendant is sentenced to death penalty with a suspension of execution by the intermediate people's court, the defendant files no appeal, nor the people's procuratorate lodges a protest, the defense lawyer shall, upon expiry of the period of appeal and protest and within the period of approval by the higher people's court, submit the materials on the representation formalities and present the written defense opinions to the higher people's court.

第一百九十九条 律师可以接受案件当事人及其近亲属的委托、法律援助机构的指派，担任死刑立即执行案件和死刑缓期执行案件的被告人的辩护人。

第二百条 辩护律师办理死刑复核案件，可以约见被告人的近亲属及其他人了解案件情况，可以要求被告人的近亲属提供相关的案件材料，可以到人民法院复制案卷材料，也可以向原承办律师请求提供案卷材料等，案件原承办律师应当给予工作上的便利和必要的协助。

第二百零一条 辩护律师办理死刑复核案件，应当按照下列情形分别开展工作：

（一）中级人民法院判处死刑缓期执行的第一审案件，被告人未上诉、人民检察院未抗诉的，辩护律师应当在上诉、抗诉期满后，高级人民法院核准期间内，向高级人民法院提交委托手续和书面辩护意见；

(2) In a case of first instance in which the defendant is sentenced to death penalty with immediate execution by the intermediate people's court, the defendant files no appeal, nor the people's procuratorate lodges a protest, the defense lawyer shall, upon expiry of the period of appeal and protest and within the period of review by the higher people's court, submit the materials on the representation formalities and present written defense opinions to the higher people's court. Where the higher people's court agrees to impose a death sentence with immediate execution upon a defendant, the defense lawyer shall, after the higher people's court renders a ruling and within the period of review by the Supreme People's Court, submit the materials on the representation formalities and present written defense opinions to the Supreme People's Court.

(3) In a case of first instance in which the defendant is sentenced to death penalty with immediate execution by the intermediate people's court, the defendant files an appeal and the people's procuratorate lodges a protest, the defense lawyer shall, upon receipt of the ruling and within the period of review by the Supreme People's Court, submit the materials on the representation formalities and present written defense opinions to the Supreme People's Court.

(二) 中级人民法院判处死刑立即执行的第一审案件, 被告人未上诉、人民检察院未抗诉的, 辩护律师应当在上诉、抗诉期满后, 高级人民法院复核期间内, 向高级人民法院提交委托手续和书面辩护意见。高级人民法院同意判处死刑立即执行的, 辩护律师应当在其作出裁定后, 最高人民法院复核期间内, 向最高人民法院提交委托手续和书面辩护意见;

(三) 中级人民法院判处死刑立即执行的第一审案件, 被告人上诉或者人民检察院抗诉, 高级人民法院裁定维持的, 辩护律师应当在收到裁定后、最高人民法院复核期间内, 向最高人民法院提交委托手续和书面辩护意见;

(4) In a case of first instance in which the defendant is sentenced to death penalty with immediate execution by the higher people's court, the defendant files no appeal, nor the people's procuratorate lodges a protest, the defense lawyer shall, upon expiry of the period of appeal and protest, submit the materials on the representation formalities and present written defense opinions to the Supreme People's Court.

(四) 高级人民法院判处死刑立即执行的第一审案件,被告人未上诉、人民检察院未抗诉的,辩护律师应当在上诉、抗诉期满后向最高人民法院提交委托手续和书面辩护意见。

**Article 202** A defense lawyer handling a death penalty review case shall diligently consult the case file materials, mainly examine the following contents, and present the corresponding defense opinions:

**第二百零二条** 辩护律师办理死刑复核案件,应当认真查阅案卷材料,重点审查以下内容并提出相应的辩护意见:

(1) the age of the defendant when he or she is suspected of a crime, whether the defendant has criminal capacity, whether the defendant is a pregnant woman in court session, and whether the defendant has attained the full age of 75 in court session;

(一) 被告人涉嫌犯罪时的年龄、被告人有无刑事责任能力、审判时是否系怀孕的妇女、审判时是否年满七十五周岁;

(2) whether the facts ascertained in the original trial are clear, whether the evidence is true and sufficient, and whether reasonable doubt has been excluded;

(二) 原判认定的事实是否清楚,证据是否确实、充分,是否已经排除合理怀疑;

(3) the circumstances of the crime, consequences and degree of harm;

(三) 犯罪情节、后果及危害程度;

(4) whether the law applied for the original judgment is correct, and whether the defendant must be sentenced to death penalty with immediate execution;

(四) 原判适用法律是否正确,是否必须判处死刑立即执行;



(5) whether there is any circumstance under which statutory or discretionary lighter or mitigated punishment may be imposed, including voluntary surrender, meritorious act, whether the victim has any fault, whether the victim is compensated, whether the victim expresses forgiveness, among others;

(五) 有无法定、酌定从轻或者减轻处罚的情节, 包括自首、立功、被害人有无过错、是否赔偿被害人、被害人是否表示谅解等;

(6) whether the judicial proceeding is legal; and

(六) 诉讼程序是否合法;

(7) other circumstances to be examined.

(七) 其他应当审查的情况。

**Article 203** During the period of review of death penalty, a defense lawyer may, besides presenting written defense opinions to the collegial bench, meet the members of the collegial bench according to the law to present defense opinions face to face.

**第二百零三条** 在死刑复核期间, 辩护律师除应当向合议庭提交书面辩护意见外, 还可以依法约见合议庭成员当面陈述辩护意见。

**Article 204** When meeting a defendant during the period of review of death penalty, a defense lawyer shall, besides verifying relevant facts and evidence with the defendant, notify the defendant of the fact that he or she may be subject to lighter or mitigated penalty, if he or she accuses or discloses a major case and has other meritorious acts; and a defense lawyer knowing that a defendant falls under the circumstance of accusation or disclosure shall form written materials in a timely manner, and submit a request to the people's court of original trial or the people's court of review for investigation and verification.

**第二百零四条** 在死刑复核期间, 辩护律师会见被告人时, 除与被告人核实相关事实、证据外, 还应当告知其如有检举、揭发重大案件等立功表现的, 可以从轻或减轻处罚; 辩护律师知悉被告人有检举、揭发的情形, 应当及时形成书面材料, 报请原审人民法院或复核人民法院调查核实。

**Article 205** During the period of review of death

penalty, a defense lawyer finding any new or missing facts or evidence that may lead to innocence, pettiness of a crime, lighter punishment, mitigated punishment or exemption from punishment shall form written materials in a timely manner, submit them to the people's court of original trial or the people's court of review together with the evidence, and request investigation and verification.

第二百零五条 在死刑复核期间,辩护律师发现新的或者遗漏可能导致无罪、罪轻、从轻、减轻、免除处罚的事实或证据,应当及时形成书面材料,连同该证据向原审人民法院或复核人民法院提供并请求调查核实。

**Chapter XII** Defense and Representation Work in Cases of Minors

第十二章 未成年人案件的辩护和代理工作

**Article 206** A lawyer may accept representation of a minor party and his or her legal representative or close relative or designation of a legal aid agency, to serve as the defense lawyer of the minor.

第二百零六条 律师可以接受未成年当事人及其法定代理人、近亲属的委托或接受法律援助机构的指派,担任未成年人的辩护律师。

**Article 207** When handling a case of a minor, a defense lawyer shall pay due attention to the physical and psychological characteristics of minors and special rights that minors should be separately detained, separately administered, and separately educated with adults according to the law.

第二百零七条 辩护律师办理未成年人案件,应当充分注意未成年人的身心特点及应当与成年人分别关押、分别管理、分别教育等依法享有的特殊权利。

**Article 208** A defense lawyer shall keep the materials on a minor involved in a case confidential and may not publicize or disseminate them by any means, including the name, domicile, photo and image of the minor involved in the case, and other materials with which the identity of the minor may be inferred, among others.

第二百零八条 辩护律师应当对涉案未成年人的资料予以保密,不得以任何方式公开或者传播,包括涉案未成年人的姓名、住所、照片、图像及可能推断出该未成年人身份的其他资料等。

**Article 209** A lawyer serving as the defender of a minor shall focus on the examination of the following contents and present the corresponding defense opinions:

**第二百零九条** 律师担任未成年人的辩护人，应当重点审查

以下内容并提出相应的辩护意见：

(1) Whether the minor has attained the full age of 14, 16 or 18 when he or she is charged of committing the criminal acts.

（一）未成年人实施被指控的犯罪行为时是否已满十四周岁、十六周岁、十八周岁；

(2) At the time of interrogation and court session, whether the legal representative of a minor is notified of being present; and whether an appropriate adult has been present, where a legal representative is unable to be present as he or she is unable to be notified or for other circumstances.

（二）讯问和开庭时，是否通知未成年人的法定代理人到场；法定代理人因无法通知或其他情况不能到场的，是否有合适成年人到场；

(3) When a female minor is interrogated, whether a female staff member is present.

（三）讯问女性未成年人，是否有女性工作人员在场；

(4) Whether the conditions for no arrest are met, including pettiness of a crime, having effective guardianship conditions or social assistance and educating measures, no social danger or relatively less social danger, and no arrest will not hinder the normal litigation.

（四）是否具备不逮捕条件，包括罪行较轻，具备有效监护条件或者社会帮教措施，没有社会危险性或者社会危险性较小，不逮捕不致妨害诉讼正常进行；

(5) Where the people's court decides to apply the summary procedures, whether the opinions of the minor defendant, his or her legal representative and defense lawyer have been consulted.

（五）人民法院决定适用简易程序审理的，是否征求了未成年被告人及其法定代理人和辩护律师的意见；

(6) In court, whether there is any circumstance under which a minor defendant is less likely to cause personal injuries and is impossible to be subject to any appliance for hindering the trial activities.

（六）在法庭上，是否存在未成年被告人人身危险性不大，不可能妨碍庭审活动而被使用械具的情况；



(7) In court session, whether a minor defendant has been induced to confess, reprimanded, satirized or threatened, etc.

（七）法庭审理过程中，是否有对未成年被告人诱供、训斥、讽刺或者威胁等情形；

(8) Whether the defendant falls under the circumstances to be tried by the juvenile court including not attaining the full age of 18 when the accused crime is committed, not attaining the full age of 20 when the people's court docket a case, etc.

（八）被告人是否属于被指控的犯罪发生时不满十八周岁、人民法院立案时不满二十周岁等应当由少年法庭审理的情形等。

**Article 210** A defense lawyer may, according to the case needs, investigate the minor's characteristics of personality, family situation, social interaction, growth experience, cause of crime, performance before and after committing the crime, guardianship education, etc. according to the law, prepare an investigation report, and submit it to the case handling authority.

**第二百一十条** 辩护律师根据案件需要，可以对未成年人的性格特点、家庭情况、社会交往、成长经历、犯罪原因、犯罪前后的表现、监护教育等情况依法进行调查并制作调查报告提交办案机关。

**Article 211** Where a minor criminal suspect has effective guardianship conditions or social assistance and educating measures, and falls under one of the following circumstances, and no arrest will not hinder the normal litigation, a defense lawyer shall present the opinions of disapproving arrest or no arrest to the people's procuratorate and the people's court:

**第二百一十一条** 未成年犯罪嫌疑人具备有效监护条件或者社会帮教措施，具有下列情形之一，不逮捕不致妨害诉讼正常进行的，辩护律师应当向人民检察院、人民法院提出不予批准逮捕或不予逮捕的意见：

(1) A minor criminal suspect commits a first-time crime or criminal negligence.

（一）初次犯罪、过失犯罪的；

(2) A minor criminal suspect conducts preparation for a crime, criminal attempt, or discontinuance of a crime.

（二）犯罪预备、中止、未遂的；

(3) A minor criminal suspect has voluntary surrender or meritorious act.

(三) 有自首或者立功表现的;

(4) A minor criminal suspect truthfully confesses the crime after committing a crime, conducts sincere repentance, actively returns ill-gotten gains, spares no effort to reduce and compensate for the loss, and is forgiven by the victim.

(四) 犯罪后如实供述罪行, 真诚悔罪, 积极退赃, 尽力减少和赔偿损失, 被害人谅解的;

(5) A minor criminal suspect is not a principal criminal of a joint crime or a ringleader in a group crime.

(五) 不属于共同犯罪的主犯或者集团犯罪中的首要分子的;

(6) A minor criminal suspect is a minor that has attained full age of 14 but has not attained full age of 16, or a student at school.

(六) 属于已满十四周岁不满十六周岁的未成年人或者系在校学生的;

(7) Other circumstances under which a minor criminal suspect may be exempted from being approved to be arrested.

(七) 其他可以不批准逮捕的情形。

**Article 212** After a minor is arrested, a defense lawyer shall, in accordance with the case situation and Article 93 of the Criminal Procedure Law, apply to the people's procuratorate for conducting examination on the necessity of custody in a timely manner.

**第二百一十二条** 未成年人被逮捕后, 辩护律师应当根据案件情况, 依据《刑事诉讼法》第九十三条的规定, 及时向人民检察院提出羁押必要性审查的申请。

**Article 213** A defense lawyer finding that the compulsory measures taken are inappropriate during the process of handling a case involving a minor shall, according to Article 94 of the Criminal Procedure Law, apply to the case handling authority for changing or revoking the compulsory measures in a timely manner.

**第二百一十三条** 辩护律师办理未成年人案件过程中, 发现采取强制措施不当的, 应当依据《刑事诉讼法》第九十四条的规定, 及时向办案机关提出变更或撤销强制措施的申请。

**Article 214** During the period of examination for prosecution, a defense lawyer may present defense opinions to the people's procuratorate.

第二百一十四条 在审查起诉期间，辩护律师可以向人民检察院提出辩护意见。

A defense lawyer believing that a minor criminal suspect meets the conditions as prescribed in paragraph 1 of Article 271 of the Criminal Procedure Law shall suggest that the people's procuratorate should make a decision of conditional non-prosecution decision.

辩护律师认为未成年犯罪嫌疑人符合《刑事诉讼法》第二百七十一条第一款规定条件的，应当向人民检察院建议作出附条件不起诉的决定。

Where a minor criminal suspect and his or her legal representative have objection to the decision of conditional non-prosecution made by the people's procuratorate, a defense lawyer shall, according to paragraph 3 of Article 271 of the Criminal Procedure Law, assist them in raising an objection in a timely manner.

未成年人犯罪嫌疑人及其法定代理人对人民检察院决定附条件不起诉有异议的，辩护律师应当依据《刑事诉讼法》第二百七十一条第三款的规定，协助其及时提出异议。

After expiry of the probationary period for conditional non-prosecution, a defense lawyer shall apply to the people's procuratorate for making a decision of non-prosecution.

附条件不起诉考验期满后，辩护律师应当申请人民检察院作出不起诉决定。

**Article 215** During the period of examination for prosecution, a defense lawyer believing that the minor criminal suspect falls under one of the following circumstances shall submit the opinions of not initiating a public prosecution to the procuratorial authority:

第二百一十五条 审查起诉期间，辩护律师认为未成年犯罪嫌疑人具有下列情形之一的，应当向检察机关提出不起诉的意见：

- (1) The minor criminal suspect has no criminal facts.
- (2) The minor criminal suspect falls under one of the circumstances as prescribed in Article 15 of the Criminal Procedure Law.

- （一）未成年犯罪嫌疑人没有犯罪事实；
- （二）未成年犯罪嫌疑人符合《刑事诉讼法》第十五条规定的情形之一；



(3) The minor criminal suspect's crime is minor and no criminal punishment is necessary or the minor criminal suspect is exempted from criminal punishment in accordance with the Criminal Law.

(三) 未成年犯罪嫌疑人犯罪情节轻微，依照刑法规定不需要判处刑罚或者免除刑罚的；

(4) After supplementary investigation has been conducted once or twice for a minor criminal case, the evidence is still insufficient and the case does not meet the conditions for public prosecution.

(四) 经一次或二次补充侦查的未成年人犯罪案件，仍然证据不足，不符合起诉条件的。

**Article 216** A defense lawyer may, in the light of the case situation, provide the court with written materials proving that relevant minor defendant is able to obtain guardianship, assistance and educating, and has no major adverse impact on the community where he or she lives, and offer suggestion of sentencing the minor defendant to supervision without incarceration, probation, etc.

**第二百一十六条** 辩护律师可以根据案件情况，向法庭提供有关未成年被告人能够获得监护、帮教以及对所居住社区无重大不良影响的书面材料，提出对未成年被告人判处管制、缓刑等量刑建议。

**Article 217** Before a court session is held and during adjournment, a defense lawyer may suggest that the court should arrange for a minor defendant to meet his or her legal representative or other adult relatives or representatives as prescribed in paragraph 1 of Article 270 of the Criminal Procedure Law.

**第二百一十七条** 开庭前和休庭时，辩护律师可以建议法庭安排未成年被告人与其法定代理人或者《刑事诉讼法》第二百七十条第一款规定的其他成年亲属、代表会见。

**Article 218** For cases in compliance with Article 275 of the Criminal Procedure Law, a defense lawyer shall request the judicial organ to seal up relevant criminal records. The files copied by the defense lawyer shall also be sealed up.

**第二百一十八条** 符合《刑事诉讼法》第二百七十五条规定的案件，辩护律师应当要求司法机关对相关犯罪记录予以封存。辩护律师复制的档案也应当封存。

**Article 219** The handling of criminal cases involving minors shall be governed by the relevant provisions of these Rules, except as otherwise specified in this section.

**第二百一十九条** 办理未成年人刑事案件，除本节特别规定的以外，适用本规范的有关规定。

**Article 220** Where the victim in a criminal case is a minor, the relevant provisions of this Chapter shall apply.

**第二百二十条** 被害人是未成年人的刑事案件，适用本章的有关规定。

Chapter XIII Defense and Representation Work in Public Prosecution Cases in Which Litigants Reconcile

第十三章 当事人和解的公诉案件的辩护和代理工作

**Article 221** A lawyer handling a public prosecution case as prescribed in Article 277 of the Criminal Procedure Law may suggest the litigants to conciliate in a private way or apply to the people's court for reconciliation.

**第二百二十一条** 律师办理符合《刑事诉讼法》第二百七十七条规定的公诉案件，可以建议当事人自行和解或向人民法院提出和解申请。

**Article 222** A lawyer may participate in and facilitate the reconciliation of the litigants. Where litigants conciliate in a private way, a lawyer may assist them in preparing a written document and submit it to the case handling authority for examination, or submit a request to the case handling authority for presiding over the development of a reconciliation agreement.

**第二百二十二条** 律师可以参与促成双方当事人和解。双方当事人自行和解的，可以协助其制作书面文件提交办案机关审查，或者提请办案机关主持制作和解协议书。

**Article 223** A lawyer shall notify the litigants of regarding reconciliation of a public prosecution case as a basis for leniency.

**第二百二十三条** 律师应当告知当事人，公诉案件的和解可以作为从宽处理的依据。

Where two litigants conciliate during the period of investigation and examination for prosecution, a defense lawyer and representing lawyer may submit a request to the case handling authority to issue a proposal of leniency to the case handling authority of the next judicial proceeding.

双方当事人在侦查、审查起诉期间达成和解的，辩护律师及代理律师可以提请办案机关向下一诉讼程序办案机关出具从宽处理建议书。

In the case of pettiness of a crime, the defense lawyer may submit a request to the people's procuratorate for making a decision of non-prosecution.

对于犯罪情节轻微的，辩护律师可以提请人民检察院作出不起诉决定。

**Article 224** In a public prosecution case in which a lawyer participates in reconciliation of the litigants, the two litigants request confidentiality of the compensation for losses in the reconciliation agreement, a lawyer may not disclose it by any means.

**第二百二十四条** 律师参与当事人和解的公诉案件，对和解协议中的赔偿损失内容，双方当事人要求保密的，不得以任何方式公开。

#### Chapter XIV Representation Work during the Confiscation Procedures for Illegal Proceeds

#### 第十四章 违法所得没收程序中的代理工作

**Article 225** During the confiscation procedures for illegal proceeds in a case where a criminal suspect or defendant escapes or dies, a lawyer may accept representation of the near relative of a criminal suspect or defendant or other interested parties to serve as the litigation representative.

**第二百二十五条** 在犯罪嫌疑人、被告人逃匿、死亡案件违法所得的没收程序中，律师可以接受犯罪嫌疑人、被告人的近亲属或其他利害关系人的委托担任诉讼代理人。

**Article 226** A lawyer accepting representation of the close relative of a criminal suspect or defendant shall assist him or her in collecting, reviewing and submitting the evidentiary materials on the relationship with the criminal suspect or defendant.

**第二百二十六条** 律师接受犯罪嫌疑人、被告人的近亲属委托的，应当协助其收集、整理、提交与犯罪嫌疑人、被告人关系的证明材料。

A lawyer accepting representation of an interested party shall assist him or her in collecting, reviewing and submitting the evidentiary materials proving that the property confiscated is held by him or her.

律师接受利害关系人委托的，应当协助其收集、整理、提交没收的财产系其所有的证据材料。



Where a client applies for participating in the litigation after the expiry of the announcement period, a lawyer shall assist him or her in explaining the reasonable cause.

委托人在公告期满后申请参加诉讼的，律师应当协助其说明合理原因。

**Article 227** After accepting representation, a lawyer shall mainly examine the following contents and present the corresponding representation opinions:

**第二百二十七条** 律师接受委托后，应当重点审查以下内容并提出相应的代理意见：

(1) Whether the criminal suspect or defendant escapes after committing serious crimes such as embezzlement, bribery, or terrorist activities, and cannot be present in court after being wanted for a year.

（一）犯罪嫌疑人、被告人是否实施了贪污贿赂犯罪、恐怖活动犯罪等重大犯罪后逃匿且在通缉一年后不能到案；

(2) Whether the criminal suspect or defendant is dead.

（二）犯罪嫌疑人、被告人是否死亡；

(3) Whether the illegal proceeds and other property involved in the case shall be recovered according to the law.

（三）是否属于依法应当追缴的违法所得及其他涉案财产；

(4) Whether the provisions of the law on jurisdiction have been complied with.

（四）是否符合法律关于管辖的规定；

(5) The type, amount, location and other relevant evidentiary materials of the illegal proceeds and other property involved in the case.

（五）违法所得及其他涉案财产的种类、数量、所在地及相关证据材料；

(6) The list of the illegal proceeds seized, impounded or frozen and other property involved in the case, and relevant legal formalities.

（六）查封、扣押、冻结违法所得及其他涉案财产的清单和相关法律手续；

(7) Whether the client files an application within the six-month announcement period.

（七）委托人是否在六个月公告期内提出申请等。

**Article 228** A lawyer accepting representation of an interested party may, in accordance with paragraph 3 of Article 281 of the Criminal Procedure Law, request the people's court to hold court sessions; and a lawyer accepting representation of the close relative of a criminal suspect or defendant may apply to the people's court for holding court sessions.

**Article 229** A lawyer participating in the court sessions of a case for which an application is filed for confiscating the illegal proceeds shall, under the auspices of the court, carry out work under the following procedures:

(1) A lawyer shall present opinions after the procurator reads the application.

(2) A lawyer shall present cross-examination opinions on the relevant evidence produced by the procurator, and may produce relevant evidence.

(3) During the period of court debate, after the prosecutor delivers speeches, a lawyer shall present representation opinions and conduct debate.

**Article 230** Where a ruling of confiscating illegal proceeds is rendered, a lawyer may accept representation of the close relative of a criminal suspect or defendant and another interested party, to file an appeal within five days of the receipt of the ruling.

Chapter XV Representation Work during the Procedures for Compulsory Medical Treatment

第二百二十八条 律师接受利害关系人委托的，可以依照《刑事诉讼法》第二百八十一条第三款的规定，要求人民法院开庭审理；律师接受犯罪嫌疑人、被告人近亲属委托的，可以申请人民法院开庭审理。

第二百二十九条 律师参加申请没收违法所得案件的开庭审理，在法庭主持下，按照下列程序进行：

（一）在检察员宣读申请书后，发表意见；

（二）对检察员出示的有关证据，发表质证意见，并可以出示相关证据；

（三）法庭辩论期间，在检察员发言后，发表代理意见并进行辩论。

第二百三十条 对没收违法所得的裁定，律师可以接受犯罪嫌疑人、被告人的近亲属和其他利害关系人的委托，自收到裁定书之日起五日内提出上诉。

第十五章 强制医疗程序中的代理工作

**Article 231** In a involuntary medical treatment case, a lawyer may accept representation of a respondent or defendant and his or her legal representative or close relative or designation of a legal aid agency, to serve as the litigation representative.

**Article 232** After accepting representation, a lawyer shall mainly examine the following contents and present the corresponding representation opinions:

(1) Whether the respondent or defendant has committed any violence, endangers public security or severely endangers the personal safety of citizens.

(2) Whether the respondent or defendant is a mental patient legally exempted from criminal liability identified according to the law under the legal procedures.

(3) Whether the respondent or defendant may continue to endanger the society, etc.

**Article 233** A lawyer participating in the court sessions of a involuntary medical treatment case shall, under the auspices of the court, carry out work under the following procedures:

(1) A lawyer shall present opinions after the procurator reads the application.

(2) A lawyer shall present cross-examination opinions on the relevant evidence produced by the procurator, and may produce relevant evidence.

**第二百三十一条** 强制医疗案件，律师可以接受被申请人、被告人及其法定代理人、近亲属的委托担任诉讼代理人或接受法律援助机构的指派担任诉讼代理人。

**第二百三十二条** 律师接受委托后，应当重点审查以下内容并提出相应的代理意见：

（一）被申请人或者被告人是否实施了暴力行为，是否危害公共安全或者严重危害公民人身安全；

（二）被申请人或者被告人是否属于经法定程序鉴定依法不负刑事责任的精神病人；

（三）被申请人或者被告人是否有继续危害社会的可能等。

**第二百三十三条** 律师参加强制医疗案件的开庭审理，在法庭主持下，按照下列程序进行：

（一）在检察员宣读申请书后，发表意见；

（二）对检察员出示的有关证据，发表质证意见，并可以出示相关证据；



(3) During the period of court debate, after the prosecutor delivers speeches, a lawyer shall present representation opinions and conduct debate.

(三) 法庭辩论期间, 在检察员发言后, 发表代理意见并进行辩论。

**Article 234** Where a person on whom an involuntary medical treatment decision is made, a victim, and his or her legal representative and close relative refuse to accept a involuntary medical treatment decision, a lawyer may accept their representation to apply to the people's court at a next higher level for reconsideration within 5 days of the receipt of a written decision.

第二百三十四条 被决定强制医疗的人、被害人及其法定代理人、近亲属对强制医疗决定不服的, 律师可以接受其委托, 自收到决定书之日起五日内向上一级人民法院申请复议。

**Article 235** A lawyer may accept representation of a person subject to involuntary medical treatment and his or her close relative to assist them in applying to the people's court of making a decision of involuntary medical treatment for terminating involuntary medical treatment.

第二百三十五条 律师可以接受被强制医疗的人及其近亲属的委托, 协助其向决定强制医疗的人民法院提出申请解除强制医疗。

To file an application, a lawyer shall submit a diagnosis assessment report of the person subject to involuntary medical treatment or apply to the people's court for collecting it. If necessary, a lawyer may apply to the people's court for entrusting an identification institution to identify the person subject to involuntary medical treatment.

提出申请的, 应当提交对被强制医疗的人的诊断评估报告或申请人民法院调取。必要时, 可以申请人民法院委托鉴定机构对被强制医疗的人进行鉴定。

## Chapter XVI Representation Work in Petition Cases

## 第十六章 申诉案件的代理工作

**Article 236** Where a litigant, his or her legal representative and close relative refuse to accept a judgment or ruling that has come into force, a lawyer may accept representation to file a petition with the people's court or the people's procuratorate on behalf of them.

第二百三十六条 当事人及其法定代理人、近亲属对已经发生法律效力判决、裁定不服的, 律师可以接受委托代理其向人民法院或者人民检察院提出申诉。

**Article 237** A lawyer believing that a petition falls under one of the following circumstances may apply to the people's court for retrial and submit a request to the people's procuratorate for filing a protest:

第二百三十七条 律师认为申诉符合下列情形之一的，可以申请人民法院提起再审程序，也可以提请人民检察院抗诉：

(1) There is new evidence proving that the facts ascertained in the original judgment and ruling have definite error and may affect the conviction and sentencing.

（一）有新的证据证明原判决、裁定认定的事实确有错误，可能影响定罪量刑的；

(2) The evidence on which conviction and sentencing are based is inaccurate and insufficient, and shall be excluded according to the law.

（二）据以定罪量刑的证据不确实、不充分，依法应当排除的；

(3) There is contradiction between the main evidence proving the case facts.

（三）证明案件事实的主要证据之间存在矛盾的；

(4) The main factual basis is changed or revoked according to the law.

（四）主要事实依据被依法变更或者撤销的；

(5) The crimes are erroneously determined.

（五）认定罪名错误的；

(6) The sentencing is obviously inappropriate.

（六）量刑明显不当的；

(7) The provisions on retroactivity of any law are violated and there is other error in law application.

（七）违反法律关于溯及力规定及其他适用法律错误的；

(8) The judicial proceedings as prescribed in law are violated and may affect the fair judgment.

（八）违反法律规定的诉讼程序，可能影响公正裁判的；

(9) A judge has acts of embezzlement, acceptance of bribes, practice of favoritism for personal gains, or adjudication by bending the law when trying a case.

（九）审判人员在审理该案件时有贪污受贿、徇私舞弊、枉法裁判行为的。

**Article 238** A lawyer representing a petition case shall file a petition with the people's court of original trial and the people's court of final trial.

**第二百三十八条** 律师代理申诉案件，应当向原审终审人民法院提出申诉；

For a difficult, complicated and significant case, a lawyer and may file a petition with the people's court at the next higher level of the people's court of final trial.

案件疑难、复杂、重大的，可以向终审人民法院的上一级人民法院提出申诉。

**Article 239** Where the people's court decides to conduct retrial and review of a case, a lawyer may apply for review in a different place, consult the case files, hold a hearing and present legal opinion in a timely manner.

**第二百三十九条** 人民法院决定再审审查的，律师可以申请异地复查、查阅案卷、召开听证会，及时提出律师意见。

**Article 240** A lawyer handling a retrial case shall, according to the provisions of these Rules on procedures, conduct debate and representation, but shall separately undergo the formalities of representation.

**第二百四十条** 律师办理再审案件，应当按照本规范相关程序的规定进行辩护或代理，但应当另行办理委托手续。

## Chapter XVII Right Relief and Practicing Discipline

## 第十七章 权利救济与执业纪律

### Section 1 Right Relief

### 第一节 权利救济

**Article 241** A lawyer participating in criminal proceedings shall, according to the provisions of the Criminal Procedure Law and the Lawyers Law, and within the scope of functions, enjoy the right to know, right to apply, right to appeal, and legal practicing rights in such respects as meeting, consultation of case files, evidence collection and questioning, cross-examination and debates according to the law. No authority shall obstruct any lawyer from performing his or her functions of defense or representation, or infringe upon the lawful rights of any lawyer.

**第二百四十一条** 律师参与刑事诉讼，依照《刑事诉讼法》及《律师法》的规定，在职责范围内依法享有知情权、申请权、申诉权，以及会见、阅卷、收集证据和发问、质证、辩论等方面的执业权利。任何机关不得阻碍律师依法履行辩护、代理职责，不得侵害律师合法权利。



**Article 242** A lawyer believing that a case handling authority and its staff members have one of the following acts of hindering his or her legal practicing of practicing rights and procedural rights may file a petition or accusation with the people's procuratorate at the same level or at the next higher level:

(1) A case handling authority and its staff members refuse to accept the disqualification requirements put forward by a lawyer or a reconsideration application filed by a lawyer refusing to accept a decision of disqualification.

(2) A case handling authority and its staff members fail to notify a criminal suspect or defendant of having the right of retaining a defender according to the law.

(3) A case handling authority and its staff members fail to forward the requirements of a criminal suspect or defendant in custody or under residential confinement for retaining a defender.

(4) A case handling authority and its staff members shall notify but do not notify a legal aid agency of designating a lawyer to provide defense or legal aid for a qualified criminal suspect or defendant or person subject to involuntary medical treatment.

(5) A case handling authority and its staff members refuse to accept or reply an application filed by a defender for changing compulsory measures or requirements put forward by a defender for terminating compulsory measures within the time limit prescribed.

第二百四十二条 律师认为办案机关及其工作人员有下列阻碍其依法行使执业权利、诉讼权利行为之一的，可以向同级或者上一级人民检察院申诉或者控告：

（一）对律师提出的回避要求不予受理或者对不予回避决定不服的复议申请不予受理的；

（二）未依法告知犯罪嫌疑人、被告人有权委托辩护人的；

（三）未转达在押的或者被监视居住的犯罪嫌疑人、被告人委托辩护人的要求的；

（四）应当通知而不通知法律援助机构为符合条件的犯罪嫌疑人、被告人或者被申请强制医疗的人指派律师提供辩护或者法律援助的；

（五）在规定时间内不受理、不答复辩护人提出的变更强制措施申请或者解除强制措施要求的；

(6) A case handling authority and its staff members fail to notify a defense lawyer of the charges against a criminal suspect and relevant case information.

(六) 未依法告知辩护律师犯罪嫌疑人涉嫌的罪名和案件有关情况的;

(7) A case handling authority and its staff members illegally restrict a defense lawyer from meeting and corresponding with a criminal suspect or defendant in custody or under residential confinement.

(七) 违法限制辩护律师同在押、被监视居住的犯罪嫌疑人、被告人会见和通信的;

(8) A case handling authority and its staff members illegally do not allow a defense lawyer to consult, excerpt and copy case materials of the case.

(八) 违法不允许辩护律师查阅、摘抄、复制本案的案卷材料的;

(9) A case handling authority and its staff members illegally restrict a defense lawyer from collecting and verifying relevant evidentiary materials.

(九) 违法限制辩护律师收集、核实有关证据材料的;

(10) A case handling authority and its staff members disagree with an application filed by a defense lawyer for collecting evidence or notifying a witness of testifying in court without justifiable reasons, or fail to reply and explain the reasons.

(十) 没有正当理由不同意辩护律师提出的收集、调取证据或者通知证人出庭作证的申请,或者不答复、不说明理由的;

(11) A case handling authority and its staff members fail to submit evidence proving innocence or pettiness of a crime of a criminal suspect or defendant.

(十一) 未依法提交证明犯罪嫌疑人、被告人无罪或者罪轻的证据材料的;

(12) A case handling authority and its staff members fail to listen to the opinions of a lawyer according to the law.

(十二) 未依法听取律师的意见的;

(13) A case handling authority and its staff members fail to notify a lawyer of the time and place of court session according to the law in a timely manner.

(十三) 未依法将开庭的时间、地点及时通知律师的;

(14) A case handling authority and its staff members fail to serve process of a case on a lawyer in a timely manner or notify a lawyer of the transfer of a case in a timely manner.

(十四) 未依法向律师及时送达案件的法律文书或者及时告知案件移送情况的;

(15) A case handling authority and its staff members obstruct a lawyer's questioning, evidence production, cross-examination, presentation of defense or representation opinions and exercising of other procedural rights.

(十五) 阻碍律师在法庭审理过程中依法发问、举证、质证、发表辩护或代理意见及行使其他诉讼权利的;

(16) A case handling authority and its staff members have other acts that hinder lawyers from exercising their procedural rights according to the law.

(十六) 其他阻碍律师依法行使诉讼权利的行为等。

**Article 243** Where a trial participant infringes upon the defendant's rights and a judge does not conduct trial under the procedures and by the method as prescribed by law, a defense lawyer may point it out to the court and request making corrections, and may also file a petition and accusation with the people's procuratorate at the same level or the next higher level.

**第二百四十三条** 庭审参加人员侵犯被告人的权利的。审判人员未按法律规定的程序、方式进行审理的，辩护律师可以向法庭指出并要求予以纠正，也可以向同级或者上一级人民检察院申诉、控告。



**Article 244** A lawyer may present opinions on or raise an objection to the procedural issues in court session. Where the court makes a decision of dismissal, a lawyer may apply for reconsideration in court. After reconsideration, a lawyer shall respect court decisions. A lawyer insisting on that a court decision is inappropriate may submit a request to the court for recording his or her opinions in the court transcript in detail as ground for appeal. After an adjournment, a lawyer may file a petition and accusation with the people's procuratorate at the same level or the next higher level according to the illegal circumstances.

**Article 245** A lawyer believing that the ground for imposing an admonition and being taken out of court is inappropriate may file a petition with the people's court at a next higher level and file an accusation with the people's procuratorate.

**Article 246** After filing a petition or accusation with the people's procuratorate, a lawyer may request the people's procuratorate to give a written reply on the handling of it within 10 days. Where a reply is not given within the prescribed time limit, a lawyer may file a petition or accusation with the people's procuratorate at a next higher level.

第二百四十四条 律师可以在庭审中对程序性问题提出意见或异议。法庭决定驳回的，律师可以当庭提出复议。经复议后律师应当尊重法庭决定。律师坚持认为法庭决定不当的，可以提请法庭将其意见详细记入法庭笔录，作为上诉理由。休庭后律师可以视违法情形向同级或者上一级人民检察院申诉、控告。

第二百四十五条 律师认为被训诫、被带出法庭理由不当的，可以向上级人民法院申诉，也可以向人民检察院控告。

第二百四十六条 律师向人民检察院提出申诉或者控告后，可以要求人民检察院在十日以内将处理情况作出书面答复。逾期不答复的，可以向上级人民检察院申诉或者控告。

**Article 247** A lawyer believing that a case handling authority and its staff members obstruct his or her legal exercising of practicing rights may apply to the municipal judicial administrative authority at its registration place and the lawyers association to which he or she is subordinate for protecting the practicing rights. In an emergency, a lawyer may apply to the judicial administrative authority and the lawyers association at the place where the emergency occurs for protecting the practicing rights. The judicial administrative authority and the lawyers association at the place where the emergency occurs shall provide assistance.

**Article 248** A lawyer falling under the following circumstanced during the process of practicing and believing that his or her practicing rights are infringed upon may apply to the relevant lawyers association for protecting the practicing rights:

(1) The right to know, right to apply, right to appeal, and legal practicing rights in such respects as meeting, consultation of case files, evidence collection and questioning, cross-examination, debate and presenting legal opinions are restricted, obstructed, infringed upon, or deprived.

(2) He or she is insulted, defamed, threatened, retaliated against, or physically injured.

(3) In court session, his or her speech delivered under the procedures is interrupted or he or she is stopped from delivering speech under the procedures.

**第二百四十七条** 律师认为办案机关及其工作人员阻碍其依法行使执业权利的，可以向其注册地的市级司法行政机关、所属的律师协会申请维护执业权利。情况紧急的，可以向事发地的司法行政机关、律师协会申请维护执业权利。事发地的司法行政机关、律师协会应当给予协助。

**第二百四十八条** 律师在执业过程中遇有以下情形，认为其执业权利受到侵犯的，可以向相关律师协会申请维护执业权利：

（一）知情权、申请权、申诉权，控告权，以及会见、通信、阅卷、收集证据和发问、质证、辩论、提出法律意见等合法执业权利受到限制、阻碍、侵害、剥夺的；

（二）受到侮辱、诽谤、威胁、报复、人身伤害的；

（三）在法庭审理过程中，被违反规定打断或者制止按程序发言的；

(4) He or she is forcibly taken out of court in violation of the provisions.

(四) 被违反规定强行带出法庭的;

(5) He or she is illegally held in custody, detained, imprisoned or his or her personal freedom is otherwise restricted.

(五) 被非法关押、扣留、拘禁或者以其他方式限制人身自由的;

(6) His or her performance of defense and representation functions in accordance with the law is otherwise obstructed and his or her practicing rights are otherwise infringed upon.

(六) 其他妨碍依法履行辩护、代理职责, 侵犯执业权利的。

**Article 249** A lawyer believing that a case handling authority and its staff members evidently violate legal provisions, obstruct a lawyer's performance of defense and representation functions in accordance with the law, and infringe upon a lawyer's practicing rights may file a complaint with the case handling authority or its superior authority at the next higher level; file an appeal or accusation with the people's procuratorate at the same level or the next higher level; or file an application with the municipal judicial administrative authority at the registration place or the lawyers' association to which he or she is subordinate for protecting the practicing rights. Where a lawyer files an application with the judicial administrative authority and lawyers' association in the place of occurrence, the relevant judicial administrative authority or lawyer's association shall receive the lawyer, and transfer his or her application within 24 hours to the municipal judicial administrative authority at the registration place or the lawyers' association to which he or she is subordinate. If the circumstances are urgent, his or her application shall be transferred immediately.

**第二百四十九条** 律师认为办案机关及其工作人员明显违反法律规定, 阻碍律师依法履行辩护、代理职责, 侵犯律师执业权利的, 可以向办案机关或者其上一级机关投诉; 向同级或者上一级人民检察院申诉、控告; 向注册地的市级司法行政机关、所属的律师协会申请维护执业权利。律师向事发地司法行政机关、律师协会提出申请的, 相关司法行政机关、律师协会应当予以接待, 并于二十四小时以内将其申请移交注册地的市级司法行政机关、所属律师协会。情况紧急的, 应当即时移交。



Section 2 Practicing Discipline

第二节 执业纪律

**Article 250** A lawyer who has contact with a case handling authority and its staff members shall abide by laws and relevant provisions.

**第二百五十条** 律师与办案机关及其工作人员接触交往，应当遵守法律及相关规定。

A lawyer may not meet the case handling authority and its staff members in violation of relevant provisions, bribe, promise to offer benefits to, introduce anyone to bribe, instruct or induce a party to bribe, inquire of a case handling authority about the case handling opinion of the case handling authority, handle a case introduced thereby, or use his or her special relationship to affect the legal handling of a case.

不得违反规定会见办案机关工作人员，向其行贿、许诺提供利益、介绍贿赂，指使、诱导当事人行贿，或者向其打探办案机关内部对案件的办理意见，承办其介绍的案件，利用与其的特殊关系，影响依法办理案件。

**Article 251** A lawyer who undertakes the business shall direct the parties to resolve disputes through legal channels and methods.

**第二百五十一条** 律师承办业务，应当引导当事人通过合法的途径、方式解决争议。

A lawyer may not take illicit means that disrupt the public order and endanger public security such as instigating, inciting and organizing the parties or other persons to sit in, raise signs, put up banners, shout slogans, express support, and surround at the judicial authority or any other state authority so as to gather a crowd to make disturbances, create negative impacts and impose pressure on the relevant department.

不得采取煽动、教唆和组织当事人或者其他人员到司法机关或者其他国家机关静坐、举牌、打横幅、喊口号、声援、围观等扰乱公共秩序、危害公共安全的非法手段，聚众滋事，制造影响，向有关部门施加压力。

**Article 252** A lawyer shall perform his or her functions according to the statutory procedures, and may not affect the legal handling of the case by any of the following illicit means:

**第二百五十二条** 律师应当依照法定程序履行职责，不得以下列不正当方式影响依法办理案件：

(1) Providing legal services and intervening in a case in the name of a lawyer without entrustment of a party or appointment of the legal aid agency, which disrupts the legal handling of the case.

(一) 未经当事人委托或者法律援助机构指派, 以律师名义为当事人提供法律服务、介入案件, 干扰依法办理案件;

(2) Distorting, conducting misleading publicity and making misleading comments on a case handled by himself or herself or any other lawyer, or maliciously hyping a case.

(二) 对本人或者其他律师正在办理的案件进行歪曲、有误导性的宣传和评论, 恶意炒作案件;

(3) By taking such methods as forming a group, conducting a joint signature, issuing an open letter, organizing online assembling and support or in the name of case study and discussion, creating the pressure of public opinion, and accusing and defaming the judicial authority and judicial system.

(三) 以串联组团、联署签名、发表公开信、组织网上聚集、声援等方式或者借个案研讨之名, 制造舆论压力, 攻击、诋毁司法机关和司法制度;

(4) Disclosing or disseminating any information or materials of a case tried in camera in violation of any provision, or any important information or evidentiary materials on a case to which he or she or any other lawyer has access in the case handling process.

(四) 违反规定披露、散布不公开审理案件的信息、材料, 或者本人、其他律师在办案过程中获悉的有关案件重要信息、证据材料。

**Article 253** When participating in the legal proceedings, a lawyer shall comply with the discipline of the court and relevant provisions, and may not commit any of the following acts which impedes or disrupts the normal legal proceedings:

**第二百五十三条** 律师参与诉讼活动, 应当遵守法庭纪律和相关规定, 不得有下列妨碍、干扰诉讼活动正常进行的行为:

(1) Refusing to appear in court to participate in judicial proceedings in accordance with the notification of the court without any justifiable reason, or retiring from the court without approval in violation of court rules.

(一) 无正当理由, 拒不按照人民法院通知出庭参与诉讼, 或者违反法庭规则, 擅自退庭;

(2) Gathering a crowd to make trouble in or assault the court, insulting, defaming, threatening, or assaulting the judicial personnel or litigation participants, or committing any other conduct that seriously disrupts the court order.

(二) 聚众哄闹、冲击法庭，侮辱、诽谤、威胁、殴打司法工作人员或者诉讼参与人，或者有其他严重扰乱法庭秩序的行为；

(3) Deliberately providing false evidence or threatening or inducing any other person to provide false evidence to the judicial authority, or obstructing the opposite party's legal obtainment of evidence.

(三) 故意向司法机关提供虚假证据或者威胁、利诱他人提供虚假证据，妨碍对方当事人合法取得证据；

(4) Any other act which impedes or disrupts normal legal proceedings as prescribed by laws.

(四) 法律规定的妨碍、干扰诉讼活动正常进行的其他行为。

**Article 254** A lawyer shall accept business in accordance with the relevant provisions and may not cheat or incite the parties to institute a lawsuit for competing for business, create and expand conflicts, or affect social stability.

**第二百五十四条** 律师应当按照有关规定接受业务，不得为争揽业务哄骗、唆使当事人提起诉讼，制造、扩大矛盾，影响社会稳定。

**Article 255** A lawyer shall respect peers, and have fair competition with other lawyers. A lawyer may not solicit business by such illicit means as defaming any other law firm or lawyer, paying the referral fee, explicitly or implicitly indicating his or her particular relationship with the case handling authority, government department and its staff members, or setting up premises, disseminating advertisements or holding signboards around any judicial authority or supervision place.

**第二百五十五条** 律师应当尊重同行，公平竞争。不得以诋毁其他律师事务所、律师；支付介绍费；向当事人明示或者暗示与办案机关、政府部门及其工作人员有特殊关系；或者在司法机关、监管场所周边违规设立办公场所、散发广告、举牌等不正当手段承揽业务。

**Article 256** A lawyer shall keep confidential any circumstance or information that the client or other person who is unwilling to disclose in the course of his or her practice shall keep it confidential.

**第二百五十六条** 律师对在执业活动中知悉的委托人和他人不愿泄露的有关情况和信息，应当予以保密。



**Article 257** When presenting defense opinions in court, a lawyer shall respect the court, convince people by reasoning, and respect other litigation participants. A lawyer may not insult, defame or threaten others, present opinions irrelevant to the case, or deliver any speech that seriously disrupts the court order.

第二百五十七条 律师当庭陈述意见应当尊重法庭，以理服人，尊重其他诉讼参与人。不得侮辱、诽谤、威胁他人，不得发表与案件无关的意见，不得发表严重扰乱法庭秩序的言论。

**Article 258** A lawyer shall express his or her opinions on a case in public in a legal, objective, impartial and prudential manner.

第二百五十八条 律师对案件公开发表言论，应当依法、客观、公正、审慎。

**Article 259** A lawyer shall handle criminal cases in accordance with these Rules, and a violator of the relevant contents of the practicing discipline shall be given administrative penalties or industry punishments by the judicial administrative authority or lawyers association at his or her registration place according to the Lawyers Law, the Measures for the Administration of the Practice of Law by Lawyers and the Rules on Punishments against Members of the Lawyers Association Violating Regulations (for Trial Implementation).

第二百五十九条 律师办理刑事案件应当遵守本规范的规定，违反执业纪律的相关内容，由其注册地司法行政机关或律师协会按《律师法》、《律师执业管理办法》及《律师协会会员违规行为处分规则（试行）》进行行政处罚或行业处分。

## Chapter XVIII Supplemental Provisions

## 第十八章 附则

**Article 260** These Rules apply to the criminal defense and representation business undertaken by lawyers across the country. Any dispute arising from the understanding or application of these Rules is subject to interpretation by the All-China Lawyers' Association.

第二百六十条 本规范适用于全国律师承办刑事辩护与代理业务。对本规范理解与适用有争议的，由中华全国律师协会负责解释。

**Article 261** These Rules, as deliberated and adopted at the 8th Plenary Session of the Ninth Executive Council of the All-China Lawyers' Association, take effect on August 27, 2017, upon which the Rules for the Handling of Criminal Cases by Lawyers as revised and issued by the All-China Lawyers' Association in 2000 are repealed.

第二百六十一条 本规范经第九届全国律师协会常务理事会第八次全体会议审议通过，自2017年8月27日起施行。2000年中华全国律师协会修订发布的《律师办理刑事案件规范》同时废止。

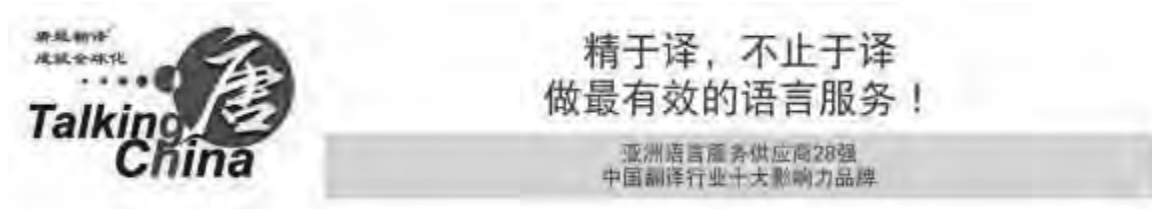
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Translation Certificate

To whom it may concern:

I, Jihua Shang, am Project Manager in this company.

We have translated the following files from the Chinese language to the English language.

- Exhibits of Declaration of Dai Xin
  - Exhibit B-6
  - Exhibit B-7
  - Exhibit B-8
  - Exhibit B-10
  - Exhibit B-17

I declare under penalty of perjury under the laws of the United States that, to the best of my knowledge, our attached translation of the above file from Chinese into English is a true, full, and accurate translation.

I affirm that the provided translation was produced under the ISO 9001:2015 certified quality management process and the agents responsible for the specified translations are qualified to translate and review documents for the above language pair.

*Jihua Shang*

Date: June 6, 2025

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